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United States Circuit Court of Appeals

for the Second Circuit

UNITED STATES OF AMERICA,
Plaintiff-Respondent,

against

A. L. A. SCHECHTER POULTRY CORPORATION, SCHECHTER LIVE POULTRY MARKET, JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER and AARON SCHECHTER,
Defendants-Appellants.

Statement Under Rule 13, Subdivision 4

The indictment herein was filed against the defendants on July 26, 1934, and the defendants pleaded not guilty on August 4, 1934, and were released on bail pending trial. A demurrer was filed on August 11, 1934, and hearing thereon was had on August 16, 1934. On August 28, 1934, a decision was rendered overruling the demurrer as to certain portions of the indictment and sustaining the demurrer as to others. On September 10, 1934, a decision was rendered denying a motion for a Bill of Particulars. The cause came on to be heard before Hon. Marcus B. Campbell and a jury in the District Court for the Eastern District of New York on October 17, 1934. On November 1, 1934, the jury found the defendants guilty on certain counts and not guilty on others. The defendants-appellants were sentenced by Judge Campbell on November 9, 1934, and this appeal was taken on November 9, 1934. There has been no substitution of attorneys.

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Indictment

IN THE

DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF NEW YORK

—

July Term, in the Year 1934, Eastern District of New York, *ss.*

—

5 APPROVAL OF CODE

First Count

The Grand Jurors of the United States of America duly impaneled and sworn in the District Court of the United States for the Eastern District of New York at the July Term of said Court in the year 1934, and inquiring for the said District, upon their oaths present that:

1. On April 13, 1934, on application to the President of the United States, by trade associations and groups representing all branches of the
6 Life Poultry Industry of the Metropolitan Area of New York, and after due notice to all persons in said Industry, and after public hearing on behalf of said Industry, the President, by authority of and in accordance with the provisions of the Act of June 16, 1933 (Public, No. 67, 73rd Congress), commonly known as and hereinafter called the National Industrial Recovery Act, duly approved the Code of Fair Competition for the said Live Poultry Industry, hereinafter called the Code, said approval being made effective as of April 23, 1934. The provisions of the said Code are set forth as follows:

Indictment

UNITED STATES DEPARTMENT OF AGRICULTURE

AGRICULTURAL ADJUSTMENT ADMINISTRATION

CODE OF FAIR COMPETITION SERIES—CODE NO. 12

CODE OF FAIR COMPETITION

for the

LIVE POULTRY INDUSTRY

of the

METROPOLITAN AREA IN AND ABOUT THE CITY OF NEW YORK

—

Approved by the President of the United States,
April 13, 1934
Effective, April 23, 1934

—

1. Executive Order
2. Letter of Transmittal (Secretary of Agriculture)
3. Letter of Transmittal (Administrator, NRA.)
4. Code

[SEAL OF THE UNITED STATES DEPARTMENT OF AGRICULTURE]

EXECUTIVE ORDER

Approval of Code of Fair Competition for the Life Poultry Industry of the Metropolitan Area in and about the City of New York

Whereas, the Secretary of Agriculture and the Administrator of the National Industrial Re-

covery Act having rendered their separate reports and recommendations and findings on the provisions of said code, coming within their respective jurisdictions, as set forth in the Executive Order No. 6182 of June 26, 1933, as supplemented by Executive Order No. 6207 of July 21, 1933, and Executive Order No. 6345 of October 20, 1933, as amended by Executive Order No. 6551 of January 8, 1934;

Now, therefore, I, FRANKLIN D. ROOSEVELT,
11 President of the United States, pursuant to the authority vested in me by title I of the National Industrial Recovery Act, approved June 16, 1933, and otherwise, do hereby find that:

1. An application has been duly made, pursuant to and in full compliance with the provisions of title I of the National Industrial Recovery Act, approved June 16, 1933, for my approval of a code of fair competition for the live poultry industry in the metropolitan area in and about the City of New York; and,

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2. Due notice and opportunity for hearings to interested parties have been given pursuant to the provisions of the act and regulations thereunder; and,

3. Hearings have been held upon said code, pursuant to such notice and pursuant to the pertinent provisions of the act and regulations thereunder; and,

4. Said code of fair competition constitutes a code of fair competition, as contemplated by the act and complies in all respects with the per-

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tinent provisions of the act, including clauses (1) and (2) of subsection (*a*) of section 3 of title I of the act; and,

5. It appears, after due consideration, that said code of fair competition will tend to effectuate the policy of Congress as declared in section 1 of title I of the act.

Now, therefore, I, FRANKLIN D. ROOSEVELT, President of the United States, pursuant to the authority vested in me by title I of the National 14
Industrial Recovery Act, approved June 16, 1933, and otherwise, do hereby approve said Code of Fair Competition for the Live Poultry Industry in the Metropolitan Area in and about the City of New York.

FRANKLIN D. ROOSEVELT,
President of the United States.

THE WHITE HOUSE,
April 13, 1934.

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AGRICULTURAL ADJUSTMENT ADMINISTRATION

LETTER OF TRANSMITTAL

APRIL 10, 1934.

The PRESIDENT,
The White House.

DEAR MR. PRESIDENT: I have the honor to submit the following:

1. There is transmitted herewith a code of fair competition for the live poultry industry of the metropolitan area in and about the City of

16 New York, which I recommend for your approval and which the National Recovery Administrator recommends for your approval with reference to the labor provisions thereof. There accompanies the code the report of the Administrator of the Agricultural Adjustment Act, the report of the Administrator of title I of the National Industrial Recovery Act, and a true, correct, and complete stenographic report of all evidence introduced at a public hearing on said code, held pursuant to section 3 (a), title I of the National
17 Industrial Recovery Act.

2. By virtue of Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345, of October 20, 1933, as amended by Executive Order No. 6551, of January 8, 1934, which, pursuant to title I of the National Industrial Recovery Act of June 16, 1933 (Public No. 67, 73rd Congress), delegated to me, as Secretary of Agriculture, certain of the powers vested in the President of the United States by the afore-
18 said act, and after considering the aforesaid code of fair competition and a true, correct, and complete stenographic report of all evidence introduced at such public hearing, and being fully advised in the premises, I make the following findings:

1. That an application has been duly made by the New York Live Poultry Commission Merchants Association, the Live Poultry Slaughterhouse Association, Inc., of New York, and the Merchants Association for Live Poultry, Inc., of New York, pursuant to and in full compliance with

the provisions of title I of the National Industrial Recovery Act, approved June 16, 1933, for the approval of the President, of the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area of New York. Said New York Live Poultry Commission Merchants Association, Live Poultry Slaughterhouse Association, Inc., of New York, and Merchants Association for Live Poultry, Inc., of New York, and the advisory body provided for in such code, are truly representative of the industry, and no inequitable restrictions on admission to membership are imposed by them.

2. That the live poultry industry of the metropolitan area in and about the City of New York, covered by such code, is included within the trades, industries, or subdivisions thereof enumerated in section II of Executive Order No. 6551, of January 8, 1934 (amending an Executive Order No. 6182, of June 26, 1933, as supplemented by Executive Order No. 6207, of July 21, 1933, and Executive Order No. 6345, of October 20, 1933).

3. That the provisions of the code establishing standards of fair competition (a) are regulations of transactions in or affecting the current of interstate and/or foreign commerce and (b) are reasonable.

4. That the code is not designed to promote monopolies or to eliminate or oppress small enterprises and will not

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operate to discriminate against them and will not permit monopolies or monopolistic practices.

5. That the code will not prevent an individual from pursuing the vocation of manual labor and selling or trading the products thereof nor prevent anyone from marketing or trading the produce of his farm.

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6. That due notice and opportunity for hearing, in connection with the aforesaid code, has been afforded interested parties, in accordance with title I of the National Industrial Recovery Act and applicable regulations issued thereunder.

7. That said code will tend to effectuate the declared policy of title I of the National Industrial Recovery Act as set forth in section 1 of said act in that the terms and provisions of such code tend to: (a) Remove obstructions to the free

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flow of interstate and foreign commerce which tend to diminish the amount thereof; (b) to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups; (c) to eliminate unfair competitive practices; (d) to promote the fullest possible utilization of the present productive capacity of industries; (e) to avoid undue restriction of production (except as may be temporarily required); (f) to increase the consumption of industrial and agricultural products by in-

creasing purchasing power; and (g) otherwise to rehabilitate industry and to conserve natural resources.

8. That said code, when approved by the President, will constitute a code of fair competition for the live poultry industry of the metropolitan area in and about the City of New York within the meaning of section 3 (a) of title I of the National Industrial Recovery Act.

26

Respectfully,

H. A. WALLACE,
Secretary.

NATIONAL RECOVERY ADMINISTRATION

LETTER OF TRANSMITTAL

APRIL 9, 1934.

The PRESIDENT,
The White House.

SIR: This is the report on those portions of the Code of Fair Competition for the Live Poultry Industry of the Metropolitan Area in and about the City of New York which, pursuant to the relative Executive orders, are subject to the jurisdiction of the Administrator for Industrial Recovery. A public hearing was conducted on January 17, 1934, in accordance with the provisions of the National Industrial Recovery Act and Executive Order dated June 26, 1933.

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GENERAL

The functions of this industry include the business of selling, purchasing for resale, trans-

porting or handling, and/or, slaughtering live poultry from the time such poultry comes into the New York Metropolitan Area to the time it is first sold in slaughtered form.

The code was submitted and sponsored by the New York Live Poultry Slaughter House Association, Incorporated, consisting of approximately 350 wholesale firms; the Retail Merchants' Association of the Live Poultry Industry, Incorporated, of New York City, representing
29 approximately 150 retail shops; and the New York Live Poultry Commission Merchants' Association, Incorporated, consisting of approximately 21 commission agencies. These three associations comprise in their membership the leaders of the industry in and about the metropolitan area of the City of New York and represent about 90 percent of the live poultry industry by numbers and by volume of business. It is estimated that the industry, as defined in the code, comprises about 521 commission merchants and slaughterhouse operators supplying the consuming public with practically all of the live
30 poultry coming into the metropolitan area from 41 States, doing an aggregate annual business of approximately $90,000,000.00.

From the information received, in the year 1933 there were employed in this industry in the neighborhood of 1,610 employees. The industry has been sorely depressed due not only to the prevailing economic conditions of the past few years, but also to the many unfair methods of competition that have prevailed, and to the many evils and abuses that have developed as a result of the uncontrolled methods of doing busi-

ness. These conditions have, in the period of from 1929 to date, reduced the number of employees by approximately 40 percent. It is believed that by the adoption of this code, the economic conditions within the industry will be substantially improved and the industry in general will be compelled to operate on a more efficient and legitimate basis. The report of the Research and Planning Division indicates that this code will effectuate an increase in wages of about 20 percent in this industry. Likewise, the report of the Research and Planning Division indicates that the code will establish an increase in employment of 19.2 percent.

The administration of the code, as designed, is to be placed in the control of a code supervisor selected by the Secretary of Agriculture and the Administrator of the National Recovery Administration with the approval of the advisory committee of the industry. The industry advisory committee consists of 15 employers representing fairly and equitably the branches of the industry and localities included within the code area. The code supervisor is given powers and duties, subject to the disapproval of the Secretary and/or the Administrator, and is himself subject to removal at any time by those officials. The proposal for concentrated authority is in response to the unanimous demand of the industry itself.

The code contains provisions for the establishment of a labor advisory committee, subject to the approval of the Administrator, and such additional advisory committees as may be necessary to aid the code supervisor in the administration of the code.

34 *Indictment*

PROVISIONS AS TO HOURS

The code provides for a maximum forty-hour week, a normal day not to exceed eight (8) hours except Thursdays and Saturdays when it shall not exceed twelve (12) hours with the following exceptions:

(*a*) Executive, managerial, and/or professional employees and outside salesmen receiving regularly thirty-five dollars ($35.00) per week or
35 more.

(*b*) A maximum forty-eight-hour week for slaughterhouse employees.

(*c*) During the Jewish holidays and legal holidays, employees may be permitted to work in excess of the above hours, provided the total number of such days shall not exceed forty-two (42) in any one calendar year.

(*d*) A complete report shall be made monthly to the code supervisor on the number of hours
36 worked by employees, pursuant to (*c*) above, also the number of hours worked by part-time, emergency, or temporary employees.

(*e*) No employee shall be permitted to work more than six days in any one week, except that an employer may use not over two of his employees on the seventh day for the purpose of feeding live poultry.

(*f*) Employees on emergency maintenance or repair work involving breakdowns or protection of life or property are permitted to work in excess of the maximum hours set forth herein,

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provided that such hours above the maximum are compensated at the rate of time and one third.

PROVISIONS AS TO WAGES

The minimum rate of pay established for each employee is 50 cents per hour with the following exceptions:

(*a*) Overtime work over and above the maximum hour classifications is to be paid at the rate of not less than time and one third for such overtime; likewise, for work done on Sundays and Jewish and legal holidays. 38

(*b*) Article IV, Section 3, provides that the code supervisor, the labor advisory committee and the industry advisory committee shall submit a report to the Administrator within six months after the effective date of this code setting up an equitable adjustment of all wages above the minimum.

(*c*) The code establishes that a minimum rate of pay shall apply irrespective of whether an employee is actually compensated on a time-rate, piece-rate, or other basis. 39

(*d*) Male and female employees performing substantially the same work shall receive the same rates of pay.

GENERAL LABOR PROVISIONS

(*a*) This code prohibits the employment of any persons under 16 years of age and under 18 years of age at occupations hazardous and/or dangerous to health.

40 *Indictment*

(*b*) The code contains the provisions that every employer shall provide for the safety and health of employees during the hours and places of their employment. Standards of safety and health shall be submitted by the code supervisor to the Administrator within six months after the effective date of this code.

(*c*) Terms of employment shall not, by reason of relationship of employer and employee other than that of marriage, be exempt from the pro-
41 visions of this code.

(*d*) This code contains the standard clause affecting handicapped workers as required by Executive order under date of February 17, 1934.

(*e*) The posting of the code shall be in accordance with such rules and regulations as defined and issued by the Administrator.

(*f*) It is believed that under article V, section 9, employment will be increased to the extent of
42 210 or more persons in the industry and will standardize the cost of marketing and selling.

COMPLIANCE WITH MANDATORY PROVISIONS

The Administrator finds that:

(*a*) The code as recommended complies in all respects and without limitation to the provisions of—

> Subsection (*a*) of section 7 and subsection (*b*) of section 10 of the National Industrial Recovery Act.

Accordingly, I recommend the approval of the Code of Fair Competition for the Live Poultry

Industry of the Metropolitan Area in and about the City of New York, hereof, to the extent of my jurisdiction, as stated in your Executive order of June 26, 1933.

Respectfully yours,

HUGH S. JOHNSON,
Administrator.

CODE OF FAIR COMPETITION FOR THE LIVE POULTRY INDUSTRY OF THE METROPOLITAN AREA IN AND ABOUT THE CITY OF NEW YORK

ARTICLE I—PURPOSES

To effect the policies of title I of the National Industrial Recovery Act, this code is established as a code of fair competition for the live poultry industry of the metropolitan area in and about the City of New York, and its provisions shall be the standards of fair competition for such industry, and shall be binding upon every member thereof.

In the event a national code of fair competition for the egg and poultry industry is approved by the President, this code shall be considered as a supplemental code to said National code and be subject to provisions thereof.

ARTICLE II—DEFINITIONS

SECTION 1. The term "live poultry industry of the metropolitan area in and about the City of New York" or "industry" means and includes every person engaged in the business of selling, purchasing for resale, transporting, or handling

and/or slaughtering live poultry, from the time such poultry comes into the New York metropolitan area to the time it is first sold in slaughtered form, and such related branches as may from time to time be included under the provisions of this code by amendment hereof.

SEC. 2. The term "member of the industry" includes, without limitation, any individual, partnership, association, corporation, or other form of enterprise engaged in the industry, either as
47 an employer or on his or its own behalf.

SEC. 3. The term "employee" as used herein includes any and all persons engaged in the industry, however compensated, except a member of the industry.

SEC. 4. The terms "act", "Secretary", and "Administrator", as used herein, mean, respectively, title I of the National Industrial Recovery Act, the Secretary of Agriculture, or his duly appointed agent, and the Administrator for Indus-
48 trial Recovery, or his duly appointed agent.

SEC. 5. The term "code supervisor" means the code supervisor created pursuant to section 1 of article VI of this code.

SEC. 6. The term "industry advisory committee" created pursuant to section 2 of article VI of this code.

SEC. 7. The term "person" means individual, partnership, corporation, association, and any other business unit.

SEC. 8. The term "employer" means any person by whom any such employee is compensated or employed.

SEC. 9. The term "State" includes Territory and the District of Columbia.

SEC. 10. The term "books and records" means any and all books, records, accounts, contracts, documents, memoranda, papers, correspondence or other written data pertaining to the business of the person in question.

SEC. 11. The term "subsidiary" means any person, of or over whom a member of the industry has, either directly or indirectly, actual or legal control, whether by stock ownership or in any other manner.

SEC. 12. The term "affiliate" means any person who has, either directly or indirectly, actual or legal control of or over a member of the industry, whether by stock ownership or in any other manner.

SEC. 13. The term "outside salesman" means any salesman who performs primarily selling functions and does not deliver. (1) "Primary" shall mean ninety (90) percent of employed time.

SEC. 14. The term "produce" means and includes live poultry and poultry slaughtered in the metropolitan area.

SEC. 15. The term "straight killing" means the practice of requiring persons purchasing poultry for resale to accept the run of any half

coop, coop, or coops, as purchased by slaughterhouse operators, except for culls.

SEC. 16. The term "culls" means poultry which is unfit for human consumption as defined in the instructions of the Chief of the Bureau of Agricultural Economics governing the inspection of live poultry at New York.

SEC. 17. The term "commission merchant" means any person receiving live poultry for sale,
53 on commission, or for or on behalf of another.

SEC. 18. The term "broker" means and includes any person who procures and brings about a sale of live poultry, but who is himself neither purchaser nor vendor in the transaction.

SEC. 19. The term "receiver or jobber" means any person receiving and buying live poultry from shippers or producers for his own account.

SEC. 20. The term "wholesale slaughterhouse" is one in which more than three thousand
54 (3,000) pounds per week, averaged over a four (4) week period, is sold for purposes of resale. All other slaughterhouses shall be deemed "retail slaughterhouses."

SEC. 21. The term "retail butcher shop" includes all premises where cut meats as well as poultry slaughtered elsewhere in the area covered by this code are sold directly to the public or consumer.

SEC. 22. The term "chicken store" includes all premises where, exclusively, poultry slaughtered elsewhere in the area covered by this code, is sold direct to the public or consumer.

55

SEC. 23. The term "chicken stand" includes all stands located in retail food markets where poultry slaughtered elsewhere in the area covered by this code is sold direct to the public or consumer.

SEC. 24. The term "metropolitan area or metropolitan area in and about the City of New York" includes the five boroughs of New York City; the counties of Rockland, Westchester, Nassau, and Suffolk in the State of New York; the counties of Hudson and Bergen in the State 56
of New Jersey; and the county of Fairfield in the State of Connecticut.

ARTICLE III—HOURS

SECTION 1. No employee shall be permitted to work in excess of forty (40) hours in any one week, except as herein otherwise provided. A normal work day shall not exceed eight (8) hours on any day except Thursday and Saturday, when it shall not exceed twelve (12) hours.

(*a*) Executives, managerial and/or profes- 57
sional employees and outside salesman, provided they regularly receive thirty-five dollars ($35.00) per week or more.

(*b*) Slaughterhouse employees provided that they shall not work more than forty-eight (48) hours in any one week.

(*c*) During Jewish holidays and legal holidays, employees may be permitted to work in excess of the hours herein provided on condition, however, that the total number of such days shall not exceed forty-two (42) in any one calendar year.

58 *Indictment*

(*d*) Employees on emergency maintenance or repair work involving break-down or protection of life or property may be permitted to work in excess of the maximum hours hereinabove set forth provided that all hours in excess of the maximum are compensated at time and one third.

SEC. 2. No employee shall be permitted to work more than six (6) days in any one week, except that an employer may use not over two
59 of his employees on the seventh day for the purpose of feeding live poultry.

SEC. 3. No employer shall knowingly engage any employee for any time which when totaled with that already performed with another employer, or employers, in the industry exceeds the maximum hours prescribed herein.

SEC. 4. Reports shall be made monthly to the code supervisor stating the number of hours worked by employees pursuant to section 1 (*c*)
60 and (*d*) of this article and the number of hours worked by part-time emergency or temporary employees.

ARTICLE IV—WAGES

SECTION 1. No employee shall be paid in any pay period less than at the rate of fifty (50) cents per hour except that:

(*a*) Overtime work, as provided for in article III, section 1 (*d*), shall be paid for at not less than time and one third for such weekly overtime.

(*b*) Work time on Sundays, Jewish holidays,
6 and on legal holidays shall be paid for at not less than at the rate of time and one third.

61

(*c*) After the effective date of this code wages shall be exempt from any charges, fines, rebates, or deductions, or any other form of deducting or withholding wages, except for employees' voluntary contributions for pensions, insurance, or benefit plans, and no employer shall withhold wages except upon legal process, or other papers lawfully requiring such withholding.

(*d*) Employers shall make payment of all wages in lawful currency or by negotiable checks payable on demand. Payments of wages shall be made at least once every two weeks.

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SEC. 2. This article establishes a minimum rate of pay which shall apply, irrespective of whether an employee is actually compensated on a time-rate, piecework, or other basis.

SEC. 3. It is the purpose of this code that there shall be an equitable adjustment of all wages above the minimum, and to that end the code supervisor, the labor advisory committee and the industry advisory committee shall, within six (6) months of the approval of this code, submit for the approval of the Administrator a proposal for adjustment in wages above the minimum. Upon approval of the Administrator, after such hearing as he may prescribe, such approval shall become binding as a part of this code; provided however, that in no event shall hourly rates of pay be reduced.

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SEC. 4. Female employees performing substantially the same work as male employees shall receive the same rates of pay as male employees.

64 *Indictment*

ARTICLE V—GENERAL LABOR PROVISIONS

SECTION 1. No person under sixteen (16) years of age shall be employed in the industry. No person under eighteen (18) years of age shall be employed at operations or occupations which are hazardous in nature or dangerous to health. The industry advisory committee shall submit to the Administrator and the code supervisor before May 1st, 1934, a list of such occupations. In any State an employer shall be
65 deemed to have complied with this provision as to age if he shall have on file a certificate or permit duly signed by the authority in such State empowered to issue employment or age certificates or permits showing that the employee is of the required age.

SEC. 2. (*a*) Employees shall have the right to organize and bargain collectively through representatives of their own choosing and shall be free from interference, restraint, or coercion of employers of labor, or their agents, in the designation of such representatives or in such self-
66 organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.

(*b*) No employee and no one seeking employment shall be required, as a condition of employment, to join any company union or to refrain from joining, organizing, or assisting a labor organization of his own choosing.

(*c*) Employers shall comply with the maximum hours of labor, minimum rates of pay, and other conditions of employment approved or prescribed by the President.

67

SEC. 3. No provision in this code shall supersede any State or Federal law which imposes on employers more stringent requirements as to age of employees, wages, hours of work, or as to safety, health, sanitary or general working conditions, or insurance, or fire protection, than are imposed by this code.

SEC. 4. No employer shall reclassify employees or duties of occupations performed, or discharge employees to reemploy them at lower rates, or engage in any other subterfuge for the purpose of defeating the provisions of the act or of this code.

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SEC. 5. Every employer shall provide for the safety and health of his employees during the hours, and at the places of their employment. Standards for safety and health shall be submitted by the code supervisor to the Administrator within six (6) months after the effective date of this code.

SEC. 6. Terms of employment shall not by reason of relationship of employer and employees other than that of marriage, be exempt from the provisions of this code; and any person working for a member of the industry, other than the wife or husband of said member, shall be considered an "employee" as herein defined. Partners and stockholders of members of the industry and others having proprietary interests in members of the industry shall not, if employed thereby, be exempt from hour, wage, and general labor provisions of this code.

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SEC. 7. No employer shall change the method of payment of compensation of employees for

the purpose of evading the provisions of this code or by other subterfuge evade the provisions of this code or of the act.

SEC. 8. Each member of the industry shall comply with such rules and regulations with regard to the posting of notices, bulletins and extracts of code provisions as may be from time to time issued by the Secretary and/or Administrator. Such notices, bulletins, and extracts of code provisions shall be written in English and such other language as may be in general use throughout the plant.

SEC. 9. To increase employment and to standardize the cost of marketing and selling, every slaughterhouse operator shall regularly employ not less than one (1) employee if the volume of his weekly sales of live poultry averaged over a period of four (4) weeks is not less than six thousand (6,000), but not in excess of eight thousand (8,000) pounds; not less than two (2) employees, if the average volume of weekly sales is above eight thousand (8,000), but not in excess of eleven thousand (11,000) pounds; not less than three (3) employees, if the average volume of weekly sales is above eleven thousand (11,000), but not in excess of eighteen thousand (18,000) pounds; not less than four (4) employees if the average volume of weekly sales is above eighteen thousand (18,000) pounds, but not in excess of twenty-eight thousand (28,000) pounds; not less than five (5) employees if the average volume of weekly sales is above twenty-eight thousand (28,000), but not in excess of forty thousand (40,000) pounds; and not less than one (1) additional employee for every addi-

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tional ten thousand (10,000) pounds, or fraction thereof, above forty thousand (40,000) pounds.

SEC. 10. A person whose earning capacity is limited because of age, physical or mental handicap, or other infirmity, may be employed on light work at a wage below the minimum established by this code, if the employer obtains from the state authority, designated by the United States Department of Labor, a certificate authorizing such person's employment at such wages and for such hours as shall be stated in the 74
certificate. Such authority shall be guided by the instructions of the United States Department of Labor in issuing certificates to such persons. Each employer shall file monthly with the code authority a list of all such persons employed by him, showing the wages paid to, and the maximum hours of work for such employee.

ARTICLE VI—ADMINISTRATION

SECTION 1. Code supervisor. A code supervisor shall be appointed by agreement between the Secretary and the Administrator with the 75
approval of the industry advisory committee. The code supervisor shall be subject to removal, at any time, by the Secretary and the Administrator.

(*a*) The salary of the code supervisor shall be fixed by agreement with the industry advisory committee and shall be subject to the approval of the Secretary and the Administrator. The salary and expenses of the code supervisor shall be paid from assessments levied and collected pursuant to paragraphs 3 and 4 of section 2 of this article.

76 *Indictment*

(*b*) The said code supervisor shall have the following powers and duties subject to the disapproval of the Secretary and/or Administrator:

(1) To administer this code and to supervise the performance of the provisions thereof.

(2) To receive and investigate complaints of alleged violations of the provisions of this code, and to report violations to the Secretary and/or Administrator.

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(3) To prescribe such rules and regulations, with the approval of the Secretary and/or Administrator, as may be necessary for the proper administration of this code and the performance of his duties herein.

(4) To submit reports to the Secretary and/or Administrator upon request, with reference to the operation and effect of this code.

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(5) To make recommendations to the Secretary and/or Administrator for amendments or modifications to this code designed to further effectuate the policy of the Act.

(6) To study the problem of inspection of poultry and make recommendations to the Secretary for the establishment of adequate inspection points for poultry in each of the five boroughs of the City of New York and in each of the counties in

the metropolitan area outside of the City of New York.

(7) To study the problem of the cost of handling poultry in the metropolitan area and make recommendations to the Secretary for a possible lowering of such costs and increasing efficiency.

(8) To study the problem of the method of arriving at the daily market price of poultry, and to make recommendations to the Secretary for the establishment of a more efficient method of truly reflecting supply and demand factors. 80

(9) With the approval of the industry advisory committee, to employ such personnel as may be necessary to assist him in his duties and to determine the compensation of such personnel.

(10) To establish a labor advisory committee, subject to approval of the Administrator, and such additional advisory committees as may be necessary and to consult with such committees and with the industry advisory committee relative to the performance of this code and the problems of the industry. 81

(11) To attend all meetings of the industry advisory committee and to assist said committee in the performance of its duties.

SEC. 2. *Industry Advisory Committee.*

1. An industry advisory committee shall be established consisting of fifteen (15) members to be selected as follows:

82 *Indictment*

(*a*) Seven (7) members representing receivers, jobbers and commission merchants to be selected as follows: (1) Five (5) members to be selected by the New York Live Poultry Commission Merchants' Association; (2) Two (2) members not members of said association, to be elected by a majority vote of members of the industry who are not members of the association, at a meeting or convention of such nonmembers. At least one of
83 these members must have his business located ontside the five boroughs of New York City. Such nonmembers may vote at such meeting by mail and a vote cast by mail shall have the same force and effect as a vote cast at such meeting. Each member defined as a receiver, jobber, or commission merchant shall be entitled to one vote. If such group fails to select its representatives within fifteen days after the effective date of this code, the code supervisor shall select such persons
84 to serve until such representatives are elected.

(*b*) Eight (8) members, representing slaughterhouse operators, to be selected as follows: (1) Three (3) members shall be selected by the Live Poultry Slaughter House Association, Inc., of New York; (2) Three (3) members shall be selected by the Merchants' Association for Live Poultry, Inc., of New York; (3) Two (2) members, not members of either of said

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associations, shall be elected by a majority vote of members of the industry who are not members of either of said associations at a meeting or convention of such nonmembers. At least one of these members must have his business located outside the five boroughs of the city. Such nonmembers may vote at such meeting by mail and a vote cast by mail shall have the same force and effect as a vote cast at such meeting. Each member of the industry defined as either a wholesale slaughterhouse operator and/or retail slaughterhouse operator shall be entitled to one vote. If such group fails to select its representatives within fifteen days after the effective date of this code, the code supervisor shall select such persons to serve until such representatives are elected.

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(*c*) Not more than one officer, director or employee of any member of the industry shall be a member of the industry advisory committee.

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(*d*) In addition to membership as above provided the Secretary and the Administrator may each appoint one representative, not a member of the industry, without vote to serve for such terms as they may specify.

(*e*) Members of the industry advisory committee shall be subject to the disapproval of the Secretary and/or Administrator.

(*f*) Members of the industry advisory committee shall serve for one year or until their successors are elected.

(*g*) All vacancies occurring in the membership of the industry advisory committee shall be filled for the unexpired term by the vote of the remaining members of the division of the industry advisory committee in which such vacancy occurs.

(*h*) Each trade or industrial association directly or indirectly participating in the selection or activities of the industry advisory committee shall (1) impose no inequitable restrictions on membership, and (2) submit to the Secretary and the Administrator true copies of its articles of association, by-laws, regulations, and any amendments when made thereto, together with such other information as to membership, organization, and activities as the Secretary or the Administrator may deem necessary to effectuate the purposes of the act.

(*i*) In order that the industry advisory committee shall at all times be truly representative of the industry and in other respects comply with the provisions of the act, the Secretary or the Administrator may prescribe such hearings as he may deem proper; and thereafter if he shall find that the industry advisory committee is not truly representative or does not in other respects comply with the provisions of the act, may require an ap-

propriate modification in the method of selection of the industry advisory committee, or take such other action as the evidence adduced at the hearing may warrant.

(*j*) Nothing contained in this code shall constitute the members of the industry advisory committee and code supervisor partners for any purpose. Nor shall any member of the industry advisory committee and/or the code supervisor be liable 92
in any manner to anyone for any act of any other member, officer, agent, or employee of the industry advisory committee and/or the code supervisor. Nor shall any member of the industry advisory committee or the code supervisor, exercising reasonable diligence in the conduct of his duties hereunder, be liable to anyone for any action or omission to act under this code, except for his own willful malfeasance or nonfeasance.

(*k*) If the Secretary or the Administrator shall determine as to matters sub- 93
ject to their respective jurisdiction that any action of the industry advisory committee and/or the code supervisor or any agency thereof may be unfair, or unjust, or contrary to the public interest the Secretary or the Administrator, as the case may be, may require that such action be suspended to afford an opportunity for investigation of the merits of such action and further consideration by such industry advisory committee and/or the code su-

pervisor or agency pending final action, which shall not be effective unless the Secretary or the Administrator approves, or unless he shall fail to disapprove after thirty days notice to him of intention to proceed with such action in its original or modified form.

2. The powers and duties of the industry advisory committee shall be as follows:

95 (*a*) To cooperate with the code supervisor in the administration of this code and to assist him in procuring the observance of the provisions thereof.

(*b*) To perform such functions as are delegated to it by the provisions of section 1 of this article.

(*c*) To act as a planning and research agency for the industry and to make recommendations to the code supervisor for amendments or modifications to this code, designed to effectuate the policy of
96 the act.

(*d*) To cooperate with the Bureau of Agricultural Economics in the preparation of uniform standards, grades (including consumer grades) and terminology for the various products of the industry. The industry advisory committee shall within six (6) months of the approval of this code forward its recommendations on standards, grades, and terminology to the Secretary. When, after due notice and an opportunity for a hearing, standards, grades, and terminology for any

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produce of the industry are promulgated by the Secretary all members of the industry may use such standards, grades, and terminology in the purchase and sale of all products, wherever applicable, and, if so, shall conspicuously designate such standards and grades on produce or packages of produce, wherever applicable.

(*e*) To cooperate in furthering a National code of fair competition for the marketing division of the egg and poultry industry.

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3. The code supervisor, with the approval of the industry advisory committee, is authorized to incur such expenses and to make such expenditures as may be necessary for the maintenance of this code. All moneys collected shall be deposited and disbursed in the name of one of the members of such industry advisory committee, designated as treasurer, who shall furnish bond in an amount satisfactory to the industry advisory committee. The members of the industry advisory committee shall serve without compensation, but shall be entitled to their expenses which are necessarily incurred in the performance of their duties herounder.

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4. Each member of the industry, subject to the jurisdiction of the code, shall pay to the industry advisory committee his pro rata share of all expenses incurred in the administration of this code, and shall make payment upon due notice from the industry advisory committee of his share of such expenses and after opportunity for a hearing to any party dissatisfied with the

amount of his assessment. Such pro rata share shall be based upon volume of business, or such other factors as the industry advisory committee may deem equitable, and shall be subject to the disapproval of the Secretary and/or Administrator. The industry advisory committee shall have power to institute legal proceedings in its own name and to take any other steps which may be necessary to collect such assessments from members of the industry.

101 ARTICLE VII—TRADE PRACTICE PROVISIONS

The following practices shall be deemed to be and shall constitute unfair methods of competition on the part of members of the industry and are hereby prohibited.

SECTION 1. False advertising.—To publish or disseminate in any manner any false advertisement. An advertisement shall be deemed to be false if it is untrue in any particular, or if directly or by ambiguity or inference it creates a misleading impression.

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SEC. 2. *Inedible products.*—Knowingly to purchase or sell for human consumption culls or other produce that is unfit for that purpose.

SEC. 3. *Rebates*—The secret payment or secret allowance of rebates, refunds, commissions, credits, or unearned discounts, whether in the form of money or otherwise, and/or the secret extension to certain purchasers of special service or privileges not extended to all purchasers on like terms and conditions, provided that nothing in this code shall be construed to prevent the payment of patronage dividends to members of

any bona fide cooperative association duly organized under the laws of any State of the United States, and provided further that nothing in this code shall be deemed to prevent the allowance of a refund, rebate, or credit to any person having a legitimate claim thereto. 103

SEC. 4. *Commercial bribery.*—Directly or indirectly to give or permit to be given or offer to give money or anything of value to agents, employees, or representatives of customers or prospective customers or to agents, employees, or representatives of competitors' customers, or prospective customers, without the knowledge of their employers or principals, as an inducement to influence their employers or principals to purchase or contract to purchase industry products from the maker of such gift or offer, or to influence such employers or principals to refrain from dealing or contracting with competitors. 104

SEC. 5. *Interference with contractual relations.*—Maliciously inducing or attempting to induce the breach of an existing oral or written contract between a competitor and his customer and/or source of supply, or interfering with or obstructing the performance of any such contractual duties or services. 105

SEC. 6. *Defamation.*—The defamation of competitors or customers by falsely imputing to them dishonorable conduct, inability to perform contracts, questionable credit standing, or by other false representations or by the false disparagement of the grade or quality of their goods.

SEC. 7. *Destructive price cutting.*—No member of the industry shall engage in destructive

price cutting. The selling or offering for sale of a product below a fair and reasonable price for the purpose and with the effect of unduly discriminating between purchasers or localities, or of injuring a competitor or of unduly suppressing competition, or of creating a monopoly, shall be deemed to be destructive price cutting. Selling or offering to sell a product below the current market price shall be prima facie evidence of destructive price cutting, but such selling or offering to sell a product may be justified by a member of the industry by showing that such selling or offering to sell was—

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(1) To dispose of damaged or defective products designated as such, or

(2) For charitable or relief purposes, or

(3) Required by law, or

(4) For such other good and sufficient reason as may be determined by the code supervisor and/or approved by the Secretary.

108 SEC. 8. *Price discrimination.*—To discriminate in price between different purchasers, except for differences in price on account of grade, quality, or quantity of produce sold, or the credit risk involved.

SEC. 9. *Giving of prizes, premiums, or gifts.*—The offering or giving of prizes, premiums, or gifts in connection with the sale of produce, or as an inducement thereto, by any scheme which involves lottery, misrepresentation, or fraud.

SEC. 10. *Misrepresenting produce.*—Knowingly to sell produce short in weight or misrep-

resented as to the point of origin, quality, condition, or kind of produce.

SEC. 11. *Excessive feeding.*—To feed poultry on the day of unloading or slaughtering beyond what is reasonably required (so that the crops or gullets will show not more than one (1) ounce per bird for broilers under two and one half (2½) pounds; two (2) ounces per bird for chickens and ducks; three (3) ounces per bird for turkeys and geese) with the intent and effect of deceiving purchasers as to the true weight of 110
the poultry.

SEC. 12. *Weighing.*—To weigh produce inaccurately with the effect of deceiving sellers or purchasers as to the true weight of the produce.

SEC. 13. *Unloading.*—Unnecessarily to delay the unloading of express lots, cars, or trucks of live poultry for the purpose of causing shrinkage in weight.

SEC. 14. *Straight killing.*—The use, in the wholesale slaughtering of poultry, of any method of slaughtering other than "straight killing" or 111
killing on the basis of official grade. Purchasers may, however, make selection of a half coop, coop, or coops, but shall not have the right to make any selection of particular birds.

SEC. 15. *Illegal sales.*—The sale or resale of produce to any person not legally entitled to conduct a business of handling the produce of the industry (where a license or permit is required).

SEC. 16. *Misrepresentations as to expected shipments.*—The misrepresentation of any fact which has to do with expected shipments, ex-

pected supply for the week, quality, or quantity of poultry with the purpose and effect of creating a false market resulting in injury to shippers, members of the industry, or consumers.

SEC. 17. *Price misrepresentation.*—The willful misrepresentation of any fact intended to affect the price of produce.

SEC. 18. *Unlawful combinations.*—To conspire, combine, agree, or arrange with any other person (1) to apportion territory for carrying on business, or (2) to apportion purchases or sales; (3) to allocate customers, or (4) to manipulate or control prices.

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SEC. 19. *Service charges.*—To make charges in connection with cooping, trucking, loading, or unloading for services that may be unnecessary or unreasonable, or may be performed by the shipper at his option, or exert other repressive action upon the freedom of producers to deliver produce direct to any local purchaser.

SEC. 20. *Misrepresentation of function.*—For a member of the industry to represent himself as a commission merchant or broker when in truth he is acting as a principal.

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SEC. 21. *Anti-Racketeering.*—The following practices and acts shall be considered violations of this code: (1) Any act of violence, coercion, extortion, or intimidation, or any threat, conspiracy, combination or concerted action to commit any act of violence, coercion, extortion, or intimidation; (2) Payment of money or any other valuable consideration to any person, firm, corporation, or association as a result of or in connection with intimidation, coercion, extortion,

violence, or injury to personal property, or threat of such violence, extortion, or injury, or to avoid such violence or injury; (3) Payment or collection, directly or indirectly, of money or other valuable considerations for the purpose of obtaining favors or special privilege under or exemption from:

(*a*) Any provision of this code, or
(*b*) Any Federal, State, municipal, county, or local statute, ordinance, rule, or regulation relating to the conduct of the industry, or
(*c*) Any rule, regulation, or policy of a labor union.

(4) any act intended to coerce, having the necessary effect of coercing any person, firm, or corporation engaged or employed in the industry, or attempting to engage or be employed in the industry, to join or not to join any association, firm, corporation, or group. Whenever any person, firm, or corporation engaged in or employed in the industry is apprised, directly or indirectly, of any such payment, collection, violence, coercion, extortion, intimidation, or any attempt to make such payment, collection, or to commit any such act of violation, coercion, extortion, or intimidation, he shall make a full and complete report thereof, together with all direct or indirect information in his possession relating thereto. Any failure to make such report or furnish such information shall be a violation of this code.

SECTION 22. *Inspection of poultry.*—The sale of live poultry which has not been inspected and approved in accordance with the rules, regulations, and/or ordinances of the particular area.

118 *Indictment*

ARTICLE VIII—GENERAL.

SECTION 1. *Reports.*

(*a*) The members of the industry shall severally, from time to time, upon the request of the Secretary (or the Administrator in the case of information relating to hours of labor, rates of pay, and other conditions of employment) furnish such information to such Federal and State agencies on and in accordance with forms of re-
119 ports supplied to them (which reports shall be verified under oath) as the Secretary or the Administrator may designate and require (1) for the protection of consumers, competitors, employees, and others, and in furtherance of the public interest, and (2) for the determination by the Secretary or the Administrator of the extent to which the declared policy of the act is being effectuated by this code.

(*b*) The members of the industry shall severally permit, for the same purpose and/or to enable the Secretary or the Administrator to ver-
120 ify the information furnished on said forms of reports, all their books and records and the books and records of their affiliates and subsidiaries, to be examined by the Secretary or the Administrator during the usual hours of business.

(*c*) The members of the industry shall severally keep books and records which will clearly reflect all financial transactions of their respective businesses and the financial condition thereof and shall see to it that their respective subsidiaries and affiliates keep such records.

(*d*) In addition to the reports to be furnished pursuant to section 1 of this article, members

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of the industry shall severally from time to time, upon request of the code supervisor, furnish information pertaining to dual interests, such as the owning or holding, directly or indirectly, of any financial or other interest by (1) a slaughterhouse operator in the business of a shipper, commission merchant, broker, receiver or jobber, chicken store, chicken stand, or butcher shop operator; (2) of a shipper, commission merchant, broker, receiver or jobber, chicken store, chicken stand, or butcher shop operator in the business of a slaughterhouse; (3) of a commission merchant or broker in the business of a receiver or jobber; (4) of a commission merchant or broker in the business of a shipper; (5) or any other combination of dual-interest information relating to dual interests may be made public.

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Nothing in this code shall relieve any person of existing obligations to furnish reports to Government agencies.

No individual reports shall be disclosed to any other member of the industry or any other party except as may be directed by the Secretary or the Administrator.

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SEC. 2. *Expected shipments.*—At or before noon on Tuesday of each week, every member of the industry receiving live poultry in carloads, truck loads exceeding three thousand (3,000) pounds, or express shipments exceeding fifteen hundred (1,500) pounds shall make to the code supervisor a written report setting forth the amount of his expected receipts for the balance of the week, the actual numbers of the cars expected, and such other information relating to

receipts or kind of poultry as the code supervisor shall require.

No member of the industry shall sell, unload, or deliver poultry received during the week which has not been reported as required above, except as provided for in approved rules of this code supervisor.

SEC. 3. *Listing sales prices.*—Every member of the industry shall submit a weekly report to the code supervisor. Such report shall show the range of daily prices and volume of sales for each kind, grade, or quality of produce sold by the member of the industry during the reported week.

SEC. 4. *Modification.*—This code and all the provisions thereof are expressly made subject to the right of the President of the United States, in accordance with the provisions of subsection (*b*) of section 10 of the act, from time to time, to cancel or modify any order, approval, license, rules, or regulation issued under said act.

This code, except as to provisions required by the act, may be modified on the basis of experience or changes in circumstances, such modifications to be based upon application to the Secretary, and/or the Administrator and such notice and hearing as he shall specify, and to become effective on approval of the Secretary and/or the Administrator.

SEC. 5. *Licenses and marketing agreements.*—If any license is hereafter issued or any marketing agreement hereafter executed, pursuant to provisions of the Agricultural Adjustment Act, containing provisions covering the subject matters referred to in subclauses (1) to (7), inclu-

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sive, of section 1 of the Executive Order No. 6551 of January 8, 1934, then to that extent such license and/or marketing agreement shall supersede such provisions of this code.

SEC. 6. *Monopolies, etc.*—No provision of this code shall be so applied as to permit monopolies or monopolistic practices, or to eliminate, oppress, or discriminate against small enterprises.

SEC. 7. *Effective date.*—The code shall become effective on the second Monday after its approval by the President.

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INTERSTATE COMMERCE IN LIVE POULTRY

2. For many years last past, up to and including the date of the filing of this indictment, a large and important part of the trade and commerce among the several states of the United States has consisted in the shipment of live poultry from, among others, the States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, West Virginia and Wisconsin, and the District of Columbia, to and into the State of New York, which said trade and commerce is now hereinbelow described in further detail.

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FREIGHT POULTRY

3. Approximately 77% of the live poultry consumed in the Metropolitan Area (consisting of

130 the five boroughs of New York City, the counties of Rockland, Westchester, Nassau and Suffolk, in the State of New York, the counties of Hudson and Bergen in the State of New Jersey, and the county of Fairfield in the State of Connecticut), hereinafter called freight poultry, is shipped by freight over interstate railroads into the State of New York from the states of origin, mentioned in paragraph 2 above, to commission merchants doing business in the State of New York, who sell and deliver said poultry, as agents for and
131 on behalf of the shippers in other states, to wholesale and retail slaughterhouse men in the State of New York. Approximately 50% of the freight poultry arrives at railroad terminals in the State of New Jersey, and the remainder thereof arrives at railroad terminals in the State of New York. The Commission merchants sell to the slaughterhouse men a large part of said poultry before it arrives at said terminals, and a large part of the remainder thereof immediately after it arrives. Freight poultry which is thus sold is delivered by the commission mer-
132 chants from the freight cars at said railroad terminals directly to the trucks of the slaughterhouse men and immediately thereafter trucked to the slaughterhouses. The freight poultry which is not thus sold at said terminals is trucked by the commission merchants from said terminals to their places of business in West Washington Market in the City of New York, where a large portion thereof is promptly transferred from the commission merchants' trucks to the trucks of slaughterhouse men purchasing such poultry, and the rest is unloaded at West Washington Mar-

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ket and thereafter sold to slaughterhouse men as soon as such purchasers can be found. Slaughterhouse men in turn sell such freight poultry to retail poultry dealers and butchers located in the Metropolitan Area in the States of New York, New Jersey and Connecticut, and slaughter said poultry promptly after selling the same.

TRUCKED AND EXPRESS POULTRY

4. Approximately 23% of the live poultry consumed in the Metropolitan Area, hereinafter called trucked and express poultry, is transported into the Metropolitan Area either by truck or railway express to the said commission merchants, who in turn promptly sell and deliver it to slaughterhouse men, or is transported by truck or express directly to the slaughterhouse men, who in turn sell it to retail poultry dealers and butchers located in the Metropolitan Area. Approximately 84% of such trucked and express poultry is transported into the State of New York from the states of origin mentioned in paragraph 2 above.

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RAPID MOVEMENT OF LIVE POULTRY

5. All such live poultry, including freight poultry and trucked and express poultry, is highly perishable and is sold and delivered usually within 24 hours after arrival in the State of New York, passing through the various channels above described from the point where it comes into the State of New York to the point where it is sold by slaughterhouse men, continuously and without substantial delay other than such as is necessitated by inspection, unloading, and finding purchasers.

REGULATION OF COMMERCE BY CODE

6. The uneconomic and dstructive practices of the Live Poultry Industry of the Metropolitan Area existing prior to the approval of the said code caused widespread competitive marketing and industrial evils in the Live Poultry Industry and demoralized the entire price structure in the Live Poultry Industry both in the said Metropolitan Area and in substantially all other poultry markets throughout the United States, there-
137 by, impeding, diverting, and harmfully affecting the interstate commerce in live poultry described in Paragraphs "2", "3", "4" and "5", above, and the interstate commerce in live poultry throughout the United States. The price structure and trade practices of the Live Poultry Industry of the Metropolitan Area govern and control the price structure and trade practices in substantially all other poultry markets throughout the United States. The said Code regulates the interstate commerce described in Paragraphs "2", "3", "4" and "5" hereinabove and throughout
138 the United States by setting up the standards of fair competition for the Live Poultry Industry of the Metropolitan Area, in accordance with the provisions of said National Industrial Recovery Act.

DEFINITION OF UNFIT AND HEALTHY POULTRY

7. Culls and poultry unfit for human consumption hereinafter will be collectively called unfit poultry or unfit chickens; and other poultry will be called healthy poultry or healthy chickens.

DESCRIPTION OF DEFENDANTS

8. Throughout the period of time from January 1, 1934, up to and including the date of the filing of this indictment: the A.L.A. Schechter Poultry Corporation has been a corporation duly organized and existing under the laws of the State of New York, and doing business and having an office in the Borough of Brooklyn in the Eastern District of New York; the Schechter Live Poultry Market, Inc. has been a corporation duly organized and existing under the laws 140
of the State of New York and doing business and having an office in the Borough of Brooklyn in the Eastern District of New York; the said A.L.A. Schechter Poultry Corporation and the said Schechter Live Poultry Market, Inc., and Joseph Schechter, Martin Schechter, (alias Meyer Schechter, alias Louis Schechter), Alex Schechter, and Aaron Schechter, (alias Abe Schechter) have been engaged in maintaining, operating and conducting on their own behalf and on behalf of each other wholesale slaughterhouse business at 991 Rockaway Avenue, Brooklyn, N.Y. and at 858 141
E. 52nd Street, Brooklyn, N.Y.

CONSPIRACY TO VIOLATE RECOVERY ACT

9. Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, the A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., hereinafter collectively called said defendants, are hereby made defendants in the First Count of this indictment. Said defendants, together with other persons to the Grand Jurors unknown, well knowing all matters of fact in this indictment set forth, beginning on or

about May 16, 1934, and continuously thereafter up to and including the date of filing this indictment, within the Eastern District of New York, did unlawfully, feloniously, and wilfully conspire with each other to commit a large number of offenses against the United States, to wit, to violate the said National Industrial Recovery Act and the said Code; that is to say, they combined, agreed, confederated, and conspired with each other:

143 (a) To knowingly, unlawfully and wilfully sell for human consumption unfit poultry, in violation of Article VII, Section 2, of said Code; and

(b) To knowingly, unlawfully and wilfully sell poultry which had not been inspected or approved in accordance with any rule, regulation or ordinance of the area where said poultry was sold, in violation of Article VII, Section 22, of said Code; and

(c) To knowingly, unlawfully and wilfully use, in the wholesale slaughtering of poultry, methods
144 of slaughtering other than "straight killing" or killing on the basis of official grade, and to knowingly, unlawfully and wilfully allow persons purchasing poultry for resale to make selections of individual chickens where such selections are made for purposes other than the elimination of culls and unfit chickens, all in violation of Article VII, Section 14, of said Code; and

(d) To knowingly, unlawfully, and wilfully commit and threaten to commit acts of violence, coercion and intimidation, in violation of Article VII, Section 21 (1), of said Code; and

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(e) To knowingly, unlawfully and wilfully submit to the Code Supervisor false and fictitious reports relating to the range of daily prices and volume of sales for various kinds, grades and qualities of poultry sold by them during the week prior to said reports, and to knowingly, unlawfully and wilfully fail, refuse and decline to submit to the Code Supervisor proper reports concerning the same, both in violation of Article VIII, Section 3, of said Code; and

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(f) To knowingly, unlawfully and wilfully fail, refuse and decline to furnish to the Code Supervisor any reports concerning the number of hours worked by employees, in violation of Article III, Section 4, of said Code; and

(g) To knowingly, unlawfully and wilfully pay their employees less than 50¢ per hour, in violation of Article IV, Sections 1 and 2, of said Code; and

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(h) To knowingly, unlawfully and wilfully permit their employees, other than those engaged in emergency, maintenance or repair work, to work more than 48 hours per week during periods other than Jewish holidays or legal holidays, in violation of Article III, Section 1, of the said Code; and

(i) To knowingly, unlawfully and wilfully interfere with, hinder, obstruct and prevent the Code Supervisor from performing and carrying out the powers and duties vested in him by said Code, including the power and duty to administer said Code, to supervise the performance of the provisions thereof, and to receive and investigate complaints of alleged violations of the provisions thereof, all in violation of Article VI, Section 1, (b-1) and (b-2), of said Code.

148 *Indictment*

OVERT ACTS IN FURTHERANCE OF CONSPIRACY

10. And the Grand Jurors aforesaid do further upon their oaths aforesaid present that to effect the objects of said consiperacy and in furtherance thereof, said defendants committed the following overt acts:

(a) On or about June 25, 1934, at the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Martin Schechter and the A. L. A.
149 Schechter Poultry Corporation, knowingly, wilfully and unlawfully sold for human consumption an unfit chicken to Harry Stauber or some other person to the Grand Jurors unknown, operating a butcher shop at 1753 Prospect Place, Brooklyn, New York.

(b) On or about June 27, 1934, at the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter and the A. L. A. Schechter Poultry Corporation sold for human consumption two
150 unfit chickens to a retail poultry dealer by the name of Wagshul (his exact name being to the Grand Jurors unknown), maintaining a place of business at 127 Sutter Avenue, Brooklyn, New York.

(c) On or about June 28, 1934, the said defendants did have in their possession at 858 East 52nd Street, Brooklyn, New York, with the intent and purpose of selling the same for human consumption, four unfit chickens,

(d) On or about June 28, 1934, said defendants did have in their possession at the said wholesale slaughterhouse at 991 Rockaway Ave-

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nue, Brooklyn, New York, with the purpose and intent of selling the same for human consumption, six unfit chickens.

(e) On or about May 26, 1934, said defendants transported from Philadelphia, Pennsylvania, into the State of New York to the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, and there unloaded and placed in the said premises with the purpose and intent of seling the same within the City of New York, approximately 5,200 pounds of live poultry which they had failed and neglected to have inspected or approved in accordance with any rule, regulation or ordinance of the said City of New York.

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(f) On or about May 28, 1934, said defendants transported from Philadelphia, Pennsylvania, into the State of New York to the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, and there unloaded and placed in the said premises with the purpose and intent of selling the same within the said City of New York, approximately 7,144 pounds and 59 baskets (each said basket containing approximately 60 to 65 pounds) of live poultry which they had failed and neglected to have inspected or approved in accordance with any rule, regulation or ordinance of the said City of New York.

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(g) During or about the week commencing May 26, 1934, the defendants sold in Brooklyn, New York, to persons to the Grand Jurors unknown, the aforesaid quantity of approximately 12,344 pounds (the aforesaid 5,200-pound lot plus the aforesaid 7,144-pound lot) of said uninspected life poultry described in paragraphs (e) and (f)

154 hereinabove, or a substantial part thereof, without having the same inspected in accordance with any rule, regulation or ordinance of the City of New York.

(h) On or about May 29, 1934, at said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants sold the said 59 baskets of uninspected live poultry referred to in paragraph (f) hereinabove, to the Mogen David Live Poultry Market, Inc., and/or
155 to David Schechter at 539 Snediker Avenue, Brooklyn, New York, without having the same inspected or approved in accordance with any rule, regulation or ordinance of the said City of New York.

(i) On or about June 20, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a retail poultry dealer by the name of Wagshul (his full
156 name being to the Grand Jurors unknown), maintaining places of business in Brooklyn, New York, and permitted said Wagshul to reject individual healthy chickens and to slaughter the chickens so selected.

(j) On or about June 22, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a retail poultry dealer (his name being to the Grand Jurors unknown), maintaining a place of busi-

ness at 961 Blake Avenue, Brooklyn, New York, and permitted said retail poultry dealer to reject individual healthy chickens and to slaughter the chickens so selected.

(k) On or about June 28, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a butcher by the name of Sam Tanowitz, maintaining a 158
place of business at 5303 Church Avenue, Brooklyn, New York, and permitted said Sam Tanowitz to reject individual healthy chickens and to slaughter the chickens so selected.

(l) On or about June 28, 1934, at the said slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a retail poultry dealer by the name of Jack Kleinman, maintaining a place of business at 1507 Kings 159
Highway, Brooklyn, New York, and permitted said Jack Kleinman to reject individual healthy chickens and to slaughter the chickens so selected.

(m) On or about June 25, 1934, at the said slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, said defendants permitted, and participated in, individual selections of particular chickens taken from particular coops and half coops in a sale of live poultry to a butcher by the name of Morris Rabinowitz, maintaining a place of business at 508 New Lots Avenue,

160 Brooklyn, New York, and permitted said Morris Rabinowitz to reject individual healthy chickens and to slaughter the chickens so selected.

(n) On or about June 27, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter did use threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations herein
161 described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

(o) On or about June 28, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Alex Schechter and Martin Schechter did use vile, threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and
162 acting on behalf of the Code Supervisor and engaged in investigating violations herein described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

(p) On or about June 29, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Alex Schechter, and Martin Schechter did use vile, threatening, coercive and intimidating language and gestures to one

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Benjamin Forsmith, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations herein described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Forsmith from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

(q) On or about July 3, 1934, at or near 991 Rockaway Avenue, Brooklyn, New York, the 164 aforesaid Joseph Schechter did use threatening, coercive and intimidating language and gestures to one Jack Musicant, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations herein described and other violations of said Code by said defendants, with the purpose, intent and effect of preventing said Musicant from performing his duties above set forth, and of enabling said defendants to commit the violations herein described and other violations of said Code.

(r) On or about June 28, 1934, the aforesaid 165 A. L. A. Schechter Poultry Corporation and Martin Schechter did submit to the Code Supervisor weekly reports for each week and from the week ending April 30, 1934, to and including the week ending June 11, 1934, which reports contained false and fictitious statements relating to the range of daily prices and volume of sales for each kind, grade and quality of poultry sold by said defendants during the period covered by each of said reports.

(s) Each and every week after the week ending May 18, 1934, to and including the date of

166 the filing of this indictment, the aforesaid A. L. A. Schechter Poultry Corporation, Alex Schechter, Martin Schechter and Aaron Schechter did pay to a person employed by them in the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York (the name of said person being to the Grand Jurors unknown), wages amounting to less than 50¢ per hour for each hour worked by the said employee.

(t) Each and every week after the week end-
167 ing May 18, 1934, to and including the date of the filing of this indictment, the aforesaid A. L. A. Schechter Poultry Corporation, Alex Schechterter, Martin Schechter and Aaron Schechter did cause and permit a person employed at the said wholesale slaughterhouse at 858 East 52nd Street, Brooklyn, New York (the name of said person being to the Grand Jurors unknown), to work at the said slaughterhouse in excess of 55 hours per week, the said employee not being engaged in emergency, maintenance or repair work, and the said violations occurring during periods
168 other than Jewish holidays or legal holidays.

INTERSTATE COMMERCE IN DEFENDANTS' POULTRY

11. All of the live poultry purchased and sold by said defendants is transported into the State of New York from other States. Said defendants purchase a substantial portion of said live poultry at the said railroad terminals in New York and New Jersey immediately after its arrival at said terminals from States other than the States of New York and New Jersey, and truck said poultry directly from said terminals to their wholesale slaughterhouses in Brooklyn,

New York, where they sell it to retail poultry dealers and butchers usually within 24 hours after said poultry has arrived at said terminals. Said defendants also purchase a substantial portion of said poultry in Philadelphia, Pennsylvania, and truck it directly therefrom to their wholesale slaughterhouses in Brooklyn, New York, where they sell it to retail poultry dealers and butchers usually within 24 hours after it is thus brought into the State of New York. All of the live poultry referred to in the overt acts prescribed in sub-paragraphs (e), (f), (g), and (h) of paragraph 10 hereinabove was thus trucked from Philadelphia, Pennsylvania, to Brooklyn, New York, and sold in interstate commerce at the wholesale slaughterhouses of said defendants in Brooklyn, New York, to retail poultry dealers and butchers. 170

EFFECT ON INTERSTATE COMMERCE OF VIOLATIONS AND TRANSACTIONS

12. The violations and the transactions referred to in subparagraphs (e), (f), (g), and (h) of paragraph 9 hereinabove are in the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 hereinabove; and all of the violations and transactions referred to in paragraph 9 hereinabove, which the said defendants conspired to commit and engage in, affect said interstate commerce in the following manner, that is to say: 171

(a) Prior to the adoption of said Code widespread competitive, marketing and industrial evils existed in the Live Poultry Industry of the Metropolitan Area. The existence of such evils

obstructed the free interstate flow of live poultry into the State of New York from other states, substantially diminished the total volume and value thereof, disrupted the orderly flow thereof, and contaminated and demoralized the character thereof. Said Code prohibits such evils and was adopted and approved for the purpose of correcting said evils.

(b) The conspiracy to commit the offenses described herein has encouraged and caused the
173 violations hereinabove described and other violations of essential provisions of said Code by a large number of other members of the Live Poultry Industry in the Metropolitan Area, and has thereby diverted substantial interstate shipments of live poultry and has caused a disruption of the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and has thereby obstructed and prevented the accomplishment of said purposes of said Code.

(c) The defendants' sale for human consump-
174 tion of unfit poultry causes the transportation in interstate commerce of unfit poultry, which poultry would otherwise be destroyed prior to said interstate transportation, and diminishes the interstate transportation of healthy and edible poultry.

(d) The defendants' sale for human consumption of unfit poultry encourages and causes the sale for human consumption of unfit poultry by other slaughterhouse men in said Metropolitan Area, and thereby causes the transportation in interstate commerce of substantial amounts of unfit poultry which would otherwise be destroyed

prior to such interstate transportation, and diminishes the interstate transportation of healthy and edible poultry.

(e) Unfit poultry is sold at prices substantially lower than the prevailing market prices for healthy poultry, and in many instances unfit poultry is sold under misrepresentations as to its edibility. Such misrepresentations and such sales at prices under prevailing market prices as aforesaid tend to demoralize the market value of healthy poultry, to cause confusion in the orderly 176
marketing of live poultry through the channels of interstate commerce described in paragraphs 2, 3, 4, and 5 of this indictment, to reduce substantially the prices paid to the persons shipping poultry into the State of New York from other states, to diminish the consumption of live poultry in the Metropolitan Area, and to reduce the volume of live poultry shipped into the State of New York from other states.

(f) The disease which contaminate unfit poultry are in many instances transferable to healthy 177
poultry, and the shipment in interstate commerce of such unfit poultry in the same crates and in the same cars with healthy poultry tends to taint, damage and infect the healthy poultry moving in interstate commerce and render the same inedible and unfit for human consumption.

(g) The purpose of inspecting poultry prior to the sale thereof in the City of New York is to eliminate unfit poultry and to detect and prevent various frauds whereby the true weight of poultry is misrepresented in the interstate transportation and delivery of live poultry from shippers outside the State of New York directly to

178 commission men and slaughterhouse men within the State of New York.

(h) The sale of uninspected poultry aids the commission of the aforesaid frauds and causes an increase in the transportation of unfit poultry into New York from other states and a decrease in the transportation of healthy chickens into the State of New York from other States.

(i) The purpose of Article VII, Section 14 of said Code, requiring "straight killing" or killing
179 on the basis of official grade, is to encourage and promote the practice of grading poultry according to quality, and packing, shipping and selling such poultry on the basis of official grade, and to prevent the evil competitive practices and demoralized and uneconomic price structure resulting from the sale at reduced prices of healthy poultry rejected in the course of selective killing. The use in the wholesale slaughtering of poultry of any method of slaughtering other than "straight killing" and the practice of permitting purchasers to make selections of individual
180 chickens from particular coops or half coops tends to defeat these purposes, and to cause the shipment and delivery to commission merchants and slaughterhouse men in New York by shippers in other states of ungraded and inferior poultry, and to diminish the price obtainable by such shippers for poultry of higher quality, and to demoralize the entire price structure.

(j) The payment by said defendants of wages at a rate less than 50¢ per hour to employees working in the transactions relating to the purchase, handling and sale of poultry described in paragraph 11 hereinabove, as prohibited by

Article IV, Sections 1 and 2 of said Code, and permitting such employees to work more than 48 hours per week, as prohibited by Article III, Section 1 of said Code, enables said defendants to obtain unfair advantages over other slaughterhouse men and thereby encourages and causes other slaughterhouse men to engage in the same and all other practices prohibited by said Code, including those referred to in sub-paragraphs (a) to (i) of paragraph 9 hereinabove, and thereby obstructs and prevents the accomplishment of the purposes of said Code, diverts substantial interstate shipments of live poultry, and causes a disruption of the normal flow of the interstate commerce in live poultry coming into the State of New York from other states. 182

(k) The commission by said defendants of acts of violence, coercion and intimidation as prohibited by Article VII, Section 21(1) of said Code, their submission to the Code Supervisor of false and fictitious reports, and their failure to submit reports, both in violation of Article III, Section 4 and Article VIII, Section 3 of said Code, and their interference with and obstruction of the Code Supervisor in accomplishing the powers and duties vested in him by said Code, in violation of Article VI, Section 1 (b-1 and b-2) of said Code, obstructs and prevents the accomplishment of the purposes of said Code, encourages and causes all of the practices prohibited by said Code, including those referred to in sub-paragraphs (a) to (j) inclusive of this paragraph, and thereby directly causes a disruption in the free and orderly flow of interstate commerce in live poultry coming into the State of New York from other states. 183

184 *Indictment*

13. And so the Grand Jurors aforesaid, upon their oaths, do further present that said defendants at the time and place and in the manner and and form aforesaid, conspired to commit offenses and committed various overt acts in furtherance of the objects thereof against the United States, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

185 SALE OF UNFIT POULTRY

Second Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

14. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive of this indictment is here realleged with the same force and effect as though here set forth in full.

15. All of the live poultry purchased and sold by Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter
186 Poultry Corporation, and Schechter Live Poultry Market, Inc. is transported into the State of New York from other States. Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc. purchase a substantial portion of said live poultry at the said railroad terminals in New York and New Jersey immediately after its arrival at said terminals from states other than the states of New York and New Jersey, and truck said poultry directly from said terminals to their wholesale slaughterhouses in Brooklyn, New

York, where they sell it to retail poultry dealers and butchers usually within 24 hours after said poultry has arrived in said terminals. Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc. also purchase a substantial portion of said poultry in Philadelphia, Pennsylvania, and truck it directly therefrom to their wholesale slaughterhouses in Brooklyn, New York, where they sell it to retail poultry dealers and 188
butchers usually within 24 hours after it is thus brought into the State of New York.

16. On or about June 25, 1934, at 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Martin Schechter and the A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, knowingly, willfully and unlawfully sold for human consumption an unfit chicken to Harry Stauber, or to some other person to the Grand Jurors unknown, operating a butcher shop at 1753 Prospect Place, Brooklyn, New York, said sale being in violation of Article VII, Section 2 of said Code. 189

17. Said violation and the transaction in which it occurred affect the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 of this indictment, in the following manner, to wit:

(a) The defendants' sale for human consumption of unfit poultry causes the transportation in interstate commerce of unfit poultry, which poultry would otherwise be destroyed prior to said interstate transportation, and diminishes the

190 interstate transportation of healthy and edible poultry.

(b) The defendants' sale for human consumption of unfit poultry encourages and causes the sale for human consumption of unfit poultry by other slaughterhouse men in said Metropolitan Area, and thereby causes the transportation in interstate commerce of substantial amounts of unfit poultry which would otherwise be destroyed prior to such interstate transportation, and di-
191 minishes the interstate transportation of healthy and edible poultry.

(c) Unfit poultry is sold at prices substantially lower than the prevailing market prices for healthy poultry, and in many instances unfit poultry is sold under misrepresentations as to its edibility. Such misrepresentations and such sales at prices under prevailing market prices as aforesaid tend to demoralize the market value of healthy poultry, to cause confusion in the orderly marketing of live poultry through the channels of interstate commerce described in
192 paragraphs 2, 3, 4, and 5 of this indictment, to reduce substantially the prices paid to the persons shipping poultry into the State of New York from other states, to diminish the consumption of live poultry in the Metropolitan Area, and to reduce the volume of live poultry shipped into the State of New York from other states.

(d) The diseases which contaminate unfit poultry are in many instances transferable to healthy poultry, and the shipment in interstate commerce of such unfit poultry in the same crates and in the same cars with healthy poultry

tends to taint, damage and infect the healthy poultry moving in interstate commerce and render the same inedible and unfit for human consumption.

18. And so the Grand Jurors aforesaid, upon their oaths, do present that the aforesaid defendants Aaron Schechter, Martin Schechter and the A. L. A. Poultry Corporation, violated Article VII, Section 2 of said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary 194 to the form of the statute of the United States in such case made and provided.

Third Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

19. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full. 195

20. On or about June 27, 1934, at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter and the A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, knowingly, willfully and unlawfully sold for human consumption two unfit chickens to a retail poultry dealer by the name of Wagshul (his full name being to the Grand Jurors unknown), maintaining a place of business at 127 Sutter Avenue, Brooklyn, New York.

21. Each and every allegation contained in paragraph numbered 17 of this indictment is

196 here realleged with the same force and effect as though here set forth in full.

22. And so the Grand Jurors, aforesaid, upon their oaths, do present that the aforesaid defendants Martin Schechter and the A. L. A. Schechter Poultry Corporation, violated Article VII, Section 2 of said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in
197 such case made and provided.

SALE OF UNINSPECTED POULTRY

Fourth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

23. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

198 24. On or about May 28, 1934, the aforesaid defendants Martin Schechter, Alex Schechter, Aaron Schechter and the A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, transported from Philadelphia, Pennsylvania, to the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, 59 baskets of live poultry; and knowingly, willfully and unlawfully sold all of said 59 baskets of live poultry to the Mogen David Live Poultry Market, Inc., and to David Schechter at 539 Snediker Avenue, Brooklyn, New York, without having the same inspected

or approved in accordance with any rule, regulation or ordinance of the City of New York, in violation of Article VII, Section 22, of said Code. Said live poultry was sold in the same baskets in which it was transported into the State within 24 hours after said poultry was transported into the State of New York and while said poultry was still moving in interstate commerce.

25. Said violation and the transaction of sale in which said violation occurred were in the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, and said violation and transaction affected and affect said interstate commerce in the following manner, that is to say:

(a) The purpose of inspecting poultry prior to the sale thereof in the City of New York is to eliminate unfit poultry and to detect and prevent various frauds whereby the true weight of poultry is misrepresented in the interstate transportation and delivery of live poultry from shippers outside the State of New York directly to commission men and slaughterhouse men within the State of New York.

(b) The sale of uninspected poultry aids the commission of the aforesaid frauds and causes an increase in the transportation of unfit poultry into New York from other states and a decrease in the transportation of healthy poultry into the State of New York from other states.

26. And so the Grand Jurors aforesaid, upon their oaths, do present that the aforesaid defendants Martin Schechter, Alex Schechter, Aaron Schechter and the A. L. A. Schechter Poultry Corporation violated Article VII, Sec-

202 tion 2 of said Code in a transaction in and affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Fifth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

27. Each and every allegation contained in
203 paragraphs 1 to 8 inclusive and paragraph 15 is here realleged with the same force and effect as though here set forth in full.

28. The aforesaid Martin Schechter, Alex Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, transported approximately 5,200 pounds of live poultry on or about May 26, 1934, and approximately 7,144 pounds on or about May 28, 1934, from Philadelphia, Pennsylvania, to the wholesale slaughterhouse operated by them at 858 East 52nd Street,
204 Brooklyn, New York; and knowingly, wilfully and unlawfully sold a part of same to a person to the Grand Jurors unknown during or about the week commencing May 26, 1934, the exact date and amount of such sale being to the Grand Jurors unknown, without having the same inspected or approved in accordance with any rule, regulation or ordinance of the City of New York, in violation of Article VII, Section 22 of said Code.

29. Each and every allegation contained in paragraph 25 of this indictment is here re-

alleged with the same force and effect as though here set forth in full.

30. And so the Grand Jurors aforesaid, upon their oaths, do present that the aforesaid defendants Martin, Schechter, Alex Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation violated Article VII, Section 2 of said Code in a transaction in and affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States 206 in such case made and provided.

Sixth Count, Seventh Count, Eighth Count, Ninth Count, Tenth Count, Eleventh Count, Twelfth Count, Thirteenth Count, Fourteenth Count, Fifteenth Count, Sixteenth Count, Seventeenth Count, Eighteenth Count, Nineteenth Count, Twentieth Count, Twenty-first Count, Twenty-second Count, Twenty-third Count

And the Grand Jurors aforesaid, upon their oaths, do further present that: 207

31. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

32. The aforesaid Martin Schechter, Alex Schechter, Aaron Schechter and the A. L. A. Schechter Poultry Corporation, hereby made defendants in the Sixth Count, Seventh Count, Eighth Count, Ninth Count, Tenth Count, Eleventh Count, Twelfth Count, Thirteenth Count, Fourteenth Count, Fifteenth Count, Six-

208 teenth Count, Seventeenth Count, Eighteenth Count, Nineteenth Count, Twentieth Count, Twenty-First Count, Twenty-Second Count and Twenty-Third Count herein, transported from Philadelphia, Pennsylvania, to the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, approximately 5,200 pounds of live poultry on or about May 26, 1934, and approximately 7,144 pounds of live poultry on or about May 28, 1934; and knowingly, wilfully and unlawfully made 18 separate,
209 distinct and individual sales therefrom during the week commencing May 26, 1934 (the exact date and amount of each such sale being to the Grand Jurors unknown), to persons, firms and/or corporations to the Grand Jurors unknown, without having the same inspected or approved in accordance with any rule, regulation or ordinance of the City of New York, each such sale being in violation of Article VII, Section 22 of said Code, each of said 18 sales being different from the sale described in the Fifth Count of this indictment.

210 33. Each such violation and each such transaction of sale in which such violation occurred was in the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 of this indictment; and each said violation and each said transaction affected and affects said interstate commerce in the following manner, that is to say:

(a) The purpose of inspecting poultry prior to the sale thereof in the City of New York is to eliminate unfit poultry, and to detect and prevent various frauds whereby the true weight of

poultry is misrepresented in the interstate transportation and delivery of live poultry from shippers outside the State of New York directly to commission men and slaughterhouse men within the State of New York.

(b) The sale of uninspected poultry aids the commission of the aforesaid frauds and causes an increase in the transportation of unfit poultry into New York from other states and a decrease in the transportation of healthy chickens into the State of New York from other states. 212

34. And so the Grand Jurors aforesaid, upon their oaths, do present that the aforesaid defendants Martin Schechter, Alex Schechter, Aaron Schechter and the A. L. A. Schechter Poultry Corporation committed 18 separate and distinct violations of Article VII, Section 2 of said Code, in transactions each of which was in interstate commerce and affected and affects interstate commerce, each such violation being against the peace and dignity of the United States and contrary to the form of the statute of the United States in each such case made and 213 provided.

VIOLATIONS OF "STRAIGHT KILLING"

Twenty-Fourth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

35. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

36. On or about June 20, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, permitted and participated in, selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a retail poultry dealer by the name of Wagshul (his full name being to the Grand Jurors unknown), maintaining places of
215 business in Brooklyn, and permitted said Wagshul to reject individual healthy chickens, in violation of Article VII, Section 14 of the said Code.

37. Said violation and the transaction in which it occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, in the following manner, to wit: The purpose of Article VII, Section 14 of said Code requiring "straight killing" or killing on the basis of
216 official grade, is to encourage and promote the practice of grading poultry according to quality and packing, shipping and selling such poultry on the basis of official grade, and to prevent the evil competitive practices and demoralized and uneconomic price structure resulting from the sale at reduced prices of healthy poultry rejected in the course of selective killing. The use in the wholesale slaughtering of poultry of any method of slaughtering other than "straight killing", and the practice of permitting purchasers to make selections of individual chickens from particular coops or half coops tends to defeat these purposes, and to cause the shipment

and delivery to commission merchants and slaughterhouse men in New York by shippers in other states of ungraded and inferior poultry, and to diminish the price obtainable by such shippers for poultry of higher quality, and to demoralize the entire price structure.

38. And so the Grand Jurors aforesaid, upon their oaths; do present that defendants Martin Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation violated Article VII, Section 14 of said Code in a transaction 218 affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Twenty-Fifth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

39. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here 219 set forth in full.

40. On or about June 22, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Martin Schechter, Alex Schechter, and the A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, permitted and participated in, selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a retail poultry dealer (his name being to the Grand Jurors unknown), maintaining a place of business at

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961 Blake Avenue, Brooklyn, New York, and permitted said retail poultry dealer to reject individual healthy chickens, in violation of Article VII, Section 14 of the said Code.

41. Each and every allegation contained in paragraph numbered 37 of this indictment is here realleged with the same force and effect as though here set forth in full.

42. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Aaron
221 Schechter, Martin Schechter, Alex Schechter, and the A. L. A. Schechter Poultry Corporation violated Article VII, Section 14 of said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Twenty-Sixth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

222

43. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

44. On or about June 28, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, permitted and participated in, selections of individual chickens taken from par-

ticular coops and half coops in the sale of live poultry by them to a butcher by the name of Sam Tanowitz, maintaining a place of business at 5303 Church Avenue, Brooklyn, New York, and permitted said Tanowitz to reject individual healthy chickens, in violation of Article VII, Section 14 of the said Code.

45. Each and every allegation contained in paragraph numbered 37 of this indictment is here realleged with the same force and effect as though here set forth in full. 224

46. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Martin Schechter, Aaron Schechter, and the A. L. A. Schechter Poultry Corporation violated Article VII, Section 14 of said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Twenty-Seventh Count

225

And the Grand Jurors aforesaid, upon their oaths, do further present that:

47. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

48. On or about June 28, 1934, at the said slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, the aforesaid Joseph Schechter and Schechter Live Poultry Market, Inc., hereby made defendants in this Count, permitted and participated in, selections of individual

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chickens taken from particular coops and half coops in the sale of live poultry by them to a retail poultry dealer by the name of Jack Kleinman, maintaining a place of business at 1507 Kings Highway, Brooklyn, New York, and permitted said Jack Kleinman to reject individual healthy chickens, in violation of Article VII, Section 14 of the said Code.

49. Each and every allegation contained in paragraph numbered 37 of this indictment is
227 here realleged with the same force and effect as though here set forth in full.

50. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Joseph Schechter and Schechter Live Poultry Market, Inc. violated Article VII, Section 14 of said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

228 *Twenty-Eighth Count*

And the Grand Jurors aforesaid, upon their oaths, do further present that:

51. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

52. On or about June 25, 1934, at the said slaughterhouse at 991 Rockaway Avenue, Brooklyn, New York, the aforesaid Joseph Schechter and Schechter Live Poultry Market, Inc., hereby

made defendants in this Count, permitted and participated in, selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a butcher by the name of Morris Rabinowitz, maintaining a place of business at 508 New Lots Avenue, Brooklyn, New York, and permitted said Rabinowitz to reject individual healthy chickens, in violation of Article VII, Section 14 of the said Code.

53. Each and every allegation contained in 230
paragraph numbered 37 of this indictment is here realleged with the same force and effect as though here set forth in full.

54. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Joseph Schechter and Schechter Live Poultry Market, Inc. violated Article VII, Section 14, of the said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided. 231

Twenty-ninth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

55. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

56. On or about June 21, 1934, at the said slaughterhouse at 858 East 52nd Street, Brook-

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lyn, New York, the aforesaid Martin Schechter, Aaron Shcechter, and A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, permitted and participated in selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a butcher (whose name is to the Grand Jurors unknown), maintaining a place of business at 304 Troy Avenue, Brooklyn, New York, and permitted said butcher to reject individual healthy chickens, in violation of Article VII, Sec-
233 tion 14 of the said Code.

57. Each and every allegation contained in paragraph numbered 37 of this indictment is here realleged with the same force and effect as though here set forth in full.

58. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Martin Schechter, Aaron Schechter, and A. L. A. Schechter Poultry Corporation violated Article VII, Section 14, of the said Code in a transaction affecting interstate commerce, against the peace
234 and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Thirtieth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

59. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

60. On or about June 21, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter, Aaron Schechter, and A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, permitted and participated in selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a butcher by the name of Sam Tanowitz, maintaining a place of business at 5303 Church Avenue, Brooklyn, New York, and permitted said Tanowitz to reject individual healthy chickens, in violation of Article VII, Section 14, of the said Code.

61. Each and every allegation contained in paragraph numbered 37 of this indictment is here realleged with the same force and effect as though here set forth in full.

62. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Martin Schechter, Aaron Schechter, and A. L. A. Schechter Poultry Corporation violated Article VII, Section 14, of the said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United Staes in such case made and provided.

Thirty-first Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

63. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

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64. On or about June 26, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter, Aaron Schechter, Alex Schechter, and A. L. A. Schechter Poultry Corporation, hereby made defendants in this Court, permitted and participated in selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to a butcher by the name of Sam Tanowitz, maintaining a place of business at 5303 Church Avenue, Brooklyn, New
239 York, and permitted said Tanowitz to reject individual healthy chickens, in violation of Article VII, Section 14, of the said Code.

65. Each and every allegation contained in paragraph numbered 37 of this indictment is here realleged with the same force and effect as though here set forth in full.

66. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Martin Schechter, Aaron Schechter, Alex Schechter, and A. L. A. Schechter Poultry Corporation violated
240 Article VII, Section 14, of the said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Thirty-second Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

67. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged

with the same force and effect as though here set forth in full.

68. On or about June 26, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter, Aaron Schechter, Alex Schechter, and A. L. A. Schechter Poultry Corporation, hereby made defendants in this Count, permitted and participated in selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to butchers by the name 242
of Sol Levine and Sam Schechter, maintaining places of business at 257 and 509 Brighton Beach Avenue, Brooklyn, New York, and permitted said Sol Levine and Sam Schechter to reject individual healthy chickens, in violation of Article VII, Section 14, of the said Code.

69. Each and every allegation contained in paragraph numbered 37 of this indictment is here realleged with the same force and effect as though here set forth in full.

70. And so the Grand Jurors aforesaid, upon 243
their oaths, do present that defendants Martin Schechter, Aaron Schechter, Alex Schechter, and A. L. A. Schechter Poultry Corporation violated Article VII, Section 14, of the said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Thirty-third Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

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71. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

72. On or about June 27, 1934, at the said slaughterhouse at 858 East 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter, Aaron Schechter, Alex Schechter, and A. L. A. Schechter Poultry Corporation, hereby made de-
245 fendants in this Count, permitted and participated in selections of individual chickens taken from particular coops and half coops in the sale of live poultry by them to butchers by the name of Sol Levine and Sam Schechter, maintaining places of business at 257 and 509 Brighton Beach Avenue, Brooklyn, New York, and permitted said Sol Levine and Sam Schechter to reject individual healthy chickens; in violation of Article VII, Section 14, of the said Code.

73. Each and every allegation contained in
246 paragraph numbered 37 of this indictment is here realleged with the same force and effect as though here set forth in full.

74. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Martin Schechter, Aaron Schechter, Alex Schechter, and A. L. A. Schechter Poultry Corporation violated Article VII, Section 14, of the said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

THREATS, COERCION AND INTIMIDATION OBSTRUCTING ENFORCEMENT OF CODE

Thirty-fourth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

75. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full. 248

76. On or about June 27, 1934, at or near 858 52nd Street, Brooklyn, New York, the aforesaid Martin Schechter, hereby made the defendant in this Count, in violation of Article VII, Section 21(1) of the said Code, did use threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and acting on behalf of the Code Supervisor and engaged in investigating violations by the defendant herein and members of the Live Poultry Industry of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Section 3, of said Code, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth, and to enable Alex Schechter, Aaron Schechter, the A. L. A. Schechter Poultry Corporation and said defendant Martin Schechter to commit said violations and other violations of said Code. 249

77. Said violation and the transaction in which it occurred affected and affect the inter-

250 state commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment in the following manner, that is to say: Prior to the adoption of the Code widespread competitive, marketing and industrial evils existed in the Live Poultry Industry of the Metropolitan Area, and obstructed the free flow of interstate commerce in live poultry into the State of New York from other States, contaminated and demoralized the character thereof, substantially diminished the total volume and value thereof, and
251 disrupted the orderly flow thereof. Said Code prohibits said evils and was adopted and approved for the purpose of correcting said evils, and thereby removing obstructions to the orderly flow of said interstate commerce. In order to ascertain whether the defendant herein and other slaughterhouse men were complying with said Code, and in order to enforce such compliance by the defendant herein and other slaughterhouse men, it was necessary for the Code Supervisor to institute such investigations as that conducted by said Phillip Alampi. The
252 use of threatening, coercive and intimidating language and gestures by the aforesaid defendant Martin Schechter prevented said Alampi from investigating violations of said Code, and thereby obstructed the Code Supervisor in obtaining compliance with said Code.

78. And so the Grand Jurors aforesaid, upon their oaths, do present that defendant Martin Schechter violated Article VII, Section 21(1), of said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the

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statute of the United States in such case made and provided:

Thirty-fifth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

79. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

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80. On or about June 28, 1934, at or near 858 East 52nd Street, Brooklyn, New York, the aforesaid Aaron Schechter, Alex Schechter and Martin Schechter, hereby made defendants in this Count, did use vile, threatening, coercive and intimidating language and gestures to one Philip Alampi, an investigator employed by and on behalf of the Code Supervisor and engaged in investigating violations by the defendants herein of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1(b-1) and (b-2), Article VII, Sections 2, 14, 15, and 22, and Article VIII, Section 3 of said Code, with the purpose, intent and effect of preventing said Alampi from performing his duties above set forth and to enable the defendants herein to commit said violations and other violations of said Code.

255

81. Said violations and the transaction in which it occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, in the following manner, that is to say: Prior to the

256 adoption of the Code wide spread competitive, marketing, and industrial evils existed in the Live Poultry industry of the Metropolitan area, and obstructed the free flow of interstate commerce in live poultry into the State of New York from other states, contaminated and demoralized the character thereof, substantially diminished the total volume and value thereof, and disrupted the orderly flow thereof. Said Code prohibits said evils and was adopted and approved for the purpose of correcting said
257 evils, and thereby removing obstructions to the orderly flow of said interstate commerce. In order to ascertain whether the defendants herein and other slaughterhouse men were complying with said Code, and in order to enforce such compliance by the defendants herein and other slaughterhouse men, it was necessary for the Code Supervisor to institute such investigations as that conducted by said Philip Alampi. The use of threatening coercive and intimidating language and gestures by the aforesaid defendants Aaron Schechter, Alex Schechter and Mar-
258 tin Schechter prevented said Alampi from investigating violations by the defendants herein, and thereby obstructed the Code Authority in obtaining compliance with said Code.

82. And so the Grand Jurors, aforesaid, upon their oaths, do present that defendants Aaron Schechter, Alex Schechter and Martin Schechter violated Article VII, Section 21(1) of said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

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Thirty-sixth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

83. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

84. On or about June 28, 1934, at or near 858 East 52nd Street, Brooklyn, New York, Aaron 260
Schechter, Alex Schechter and Martin Schechter, hereby made defendants in this Count, did use vile, threatening, coercive and intimidating language and gestures to one Benjamin Forsmith, an investigator employed by and on behalf of the Code Supervisor and engaged in investigating violations of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, sections 1(b-1) and (b-2), Article VII, Sections 2; 14, 15 and 22, and Article VIII, Section 3 of said Code, with the purpose, intent and effect of preventing said Forsmith from performing 261
his duties above set forth and to enable the defendants herein to commit said violations of said Code.

85. Said violation and the transaction in which it occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 of this indictment, in the following manner, that is to say: Prior to the adoption of the Code wide spread competitive, marketing, and industrial evils existed in the Live Poultry industry of the Metropolitan area, and obstructed the free flow of interstate com-

262 merce in live poultry into the State of New York from other states, contaminated and demoralized the character thereof, substantially diminished the total volume and value thereof, and disrupted the orderly flow thereof. Said Code prohibits said evils and was adopted and approved for the purpose of correcting said evils, and thereby removing obstructions to the orderly flow of said interstate commerce. In order to ascertain whether said defendants and other slaughterhouse men were complying with
263 said Code, and in order to enforce such compliance by the defendants herein and other slaughterhouse men, it was necessary for the Code Supervisor to institute such investigations as that conducted by said Benjamin Forsmith. The use of threatening, coercive, and intimidating language and gestures by the aforesaid defendants Aaron Schechter, Alex Schechter and Martin Schechter prevented said Forsmith from investigating violations by said defendants, and thereby obstructed the Code Authority in obtaining compliance with said Code.

264 86. And so the Grand Jurors aforesaid, upon their oaths, do present that the aforesaid defendants Aaron Schechter, Alex Schechter and Martin Schechter violated Article VII, Section 21(1) of said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Thirty-seventh Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

87. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment realleged with the same force and effect as though here set forth in full.

88. On or about July 3, 1934, at or near 991 Rockaway Avenue, Brooklyn, New York, Joseph Schechter, hereby made the defendant in this Court, did use threatening, coercive and intimidating language and gestures to one Jack Musicant, an investigator employed by and on behalf 266 of the Code Supervisor and engaged in investigating violations of Article III, Sections 1 and 4, Article IV, Sections 1 and 2, Article VI, Sections 1 (b-1) and (b-2), Article VII, Sections 2, 14, 15 and 22, and Article VIII, Sections 3 of said Code, with the purpose, intent and effect of preventing said Musicant from performing his duties above set forth and to enable the defendant herein to commit said violations and other violations of the said Code.

89. Said violation and the transaction in 267 which it occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, in the following manner, that is to say: Prior to the adoption of the Code wide spread competitive, marketing and industrial evils existed in the Live Poultry Industry of the Metropolitan area, and obstructed the free flow of interstate commerce in live poultry into the State of New York from other states, contaminated and demoralized the character thereof, substantially diminished the total volume and value thereof, and disrupted the orderly flow thereof. Said Code prohibits

268 said evils and was adopted and approved for the purpose of correcting said evils, and thereby removing obstructions to the orderly flow of said interstate commerce. In order to ascertain whether the defendant herein and other slaughterhouse men were complying with said Code, and in order to enforce such compliance by the defendants herein and other slaughterhouse men, it was necessary for the Code Supervisor to institute such investigations as that conducted by said Jack Musicant. The use of threatening,
269 coercive and intimidating language and gestures by the aforesaid Joseph Schechter prevented said Musicant from investigating violations by said defendants, and thereby obstructed the Code Authority in obtaining compliance with said Code.

90. And so the Grand Jurors aforesaid, upon their oaths, do present that defendant Joseph Schechter violated Article VII, Section 21(1) of said Code in a transaction affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the
270 statute of the United States in such case made and provided.

FALSE REPORTS

Thirty-eighth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

91. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

92. On or about June 28, 1934, A. L. A. Schechter Poultry Corporation and Martin Schechter, hereby made defendants in this Count, did submit to the Code Supervisor weekly reports for each week from the week ending May 19, 1934, to and including the week ending June 11, 1934, which reports contained false and fictitious statements relating to the range of daily prices and volume of sales for each kind and grade of poultry sold by them during the periods covered by each of said reports, in violation of Article VI, 272
Sections 1 and 2 and Article VIII, Sections 3 of said Code.

93. Said violation and the transaction in which it occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment in the following manner, that is to say: Prior to the adoption of said Code wide spread competitive, marketing, and industrial evils existed in the Live Poultry Industry of the Metropolitan area, and obstructed the free flow of interstate commerce in live poultry into the State of New York from other states, 273
contaminated and demoralized the character thereof, substantially diminished the volume and value thereof, and disrupted the orderly flow thereof. Said Code prohibits said evils and was adopted and approved for the purpose of correcting said evils. The submission by the defendants herein of false or fictitious reports relating to the range of daily prices and volume of sales, obstructs and prevents the accomplishment of the purposes of said Code, encourages and causes all of the practices prohibited by said Code, causes a disruption in the normal flow of the interstate commerce in live poultry coming

274 into the State of New York from other states, and diverts substantial shipments of such poultry.

94. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation and Martin Schechter violated Article VI, Sections 1 and 2 and Article VIII, Section 3 of said Code, in transactions affecting interstate commerce, against the peace and dignity of the United States and con-
275 trary to the form of the statute of the United States in such case made and provided.

WITHHOLDING SALES REPORTS

Thirty-ninth Count

And the Graud Jurors aforesaid, upon their oaths, do further present that:

95. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

276 96. The aforesaid Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., hereby made defendants in this Count, have at all times heretofore wilfully, knowingly and unlawfully failed and refused to submit weekly reports or any reports whatever relating to the range of daily prices and volume of sales for each kind, grade or quality of produce sold by them for the period from June 11, 1934, to and including the date of filing this indictment, in violation of Article VIII, Section 3 of said Code.

97. Said violations and the transactions in which they occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment in the following manner, that is to say: Prior to the adoption of said Code wide spread competitive, marketing, and industrial evils existed in the Live Poultry Industry of the Metropolitan Area, and obstructed the free flow of interstate commerce in live poultry into the State of New York from other states, contaminated and demoralized the character thereof, substantially diminished the volume and value thereof, and disrupted the orderly flow thereof. Said Code prohibits said evils and was adopted and approved for the purpose of correcting said evils. The failure and refusal by the defendants herein to submit reports relating to the range of daily prices and volume of sales, obstructs and prevents the accomplishment of the purposes of said Code, encourages and causes all of the practices prohibited by said Code, causes a disruption in the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and diverts substantial shipments of such poultry. 278 279

98. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., violated Article VIII, Section 3 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute

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of the United States in such case made and provided.

WITHHOLDING REPORTS ON HOURS WORKED

Fortieth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

99. Each and every allegation contained in paragraphs numbered 1 to 8 inclusive and para-
281 graph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

100. The aforesaid Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., hereby made defendants in this Count, wilfully, knowingly and unlawfully failed and refused to make any monthly reports or other reports to the Code Supervisor regarding the number of hours
282 worked by their employees, during the period from May 16, 1934 to and including the time of filing this indictment, in violaton of Article III, Section 4 of said Code.

101. Said violations and the transactions in which they occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 of this indictment in the following manner, that is to say: Prior to the adoption of said Code wide spread competitive, marketing, and industrial evils existed in the Live Poultry Industry of the Metropolitan Area, and obstructed the free flow of interstate commerce in live poultry into the State of New

York from other states, contaminated and demoralized the character thereof, substantially diminished the volume and value thereof, and disrupted the orderly flow thereof. Said Code prohibits said evils and was adopted and approved for the purpose of correcting said evils. The failure and refusal by the defendants herein to make such reports regarding the number of hours worked by employees of the defendants herein, obstructs and prevents the accomplishment of the purposes of said Code and of said 284
National Industrial Recovery Act, encourages and causes all of the practices prohibited by said Code, causes a disruption in the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and diverts substantial shipments of such poultry.

102. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants Joseph Schechter, Martin Schechter, Alex Schechter, Aaron Schechter, A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, 285
Inc., violated Article III, Section 4 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

ILLEGAL WAGES

Forty-first Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

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103. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

104. During the week ending on or about May 18, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person em-
287 ployed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

105. Said violation and the transactons in which it occurred affected and affect the inter-
288 state commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment in the following manner, that is to say: The payment by the defendants herein of wages at a rate less than 50¢ per hour to employees working in the transactions relating to the purchase of poultry coming into the State of New York from other states and the handling and sale thereof at the said wholesale slaughterhouse operated by the defendants herein enables the defendants herein to obtain unfair advantages over other slaughterhouse men, and encourages and causes other slaughterhouse men to engage in the same and all other practices prohibited by said Code,

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and thereby obstructs and prevents the accomplishment of the purposes of said Code, and of the said National Industrial Recovery Act, causes a disruption in the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and diverts substantial interstate shipments of such poultry.

106. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin 290
Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Forty-second Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

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107. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

108. During the week ending on or about May 25, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street,

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Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

109. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though
293 here set forth in full.

110. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Forty-third Count

294

And the Grand Jurors aforesaid, upon their oaths, do further present that:

111. Each and every alelgation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

112. During the week ending on or about June 1, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them

at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

113. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full. 296

114. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Forty-fourth Count

297

And the Grand Jurors aforesaid, upon their oaths, do further present that:

115. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

116. During the week ending on or about June 8, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them

at 358 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 60¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

117. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

118. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Forty-fifth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

119. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

120. During the week ending on or about June 15, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person em-

purpose by them at the wholesale slaughterhouse operated by them at 358 East 22nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown), which amounting to less than $50 per week for each week worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

121. Each and every allegation contained in paragraph 116 of this indictment is here realleged with the same force and effect as though here set forth in full. 202

122. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided. 203

Forty-sixth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

123. Each and every allegation contained in paragraphs 1 to 5 inclusive and paragraph 13 of this indictment is here realleged with the same force and effect as though here set forth in full.

124. During the week ending on or about June 22, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants

304 in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

125. Each and every allegation contained in
305 paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

126. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and pro-
306 vided.

Forty-seventh Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

127. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

128. During the week ending on or about June 29, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron

Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code. 308

129. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

130. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided. 309

Forty-eighth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

131. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

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132. During the week ending on or about July 6, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate
311 per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

133. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

134. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter,
312 violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Forty-ninth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

135. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15

of this indictment is here realleged with the same force and effect as though here set forth in full.

136. During the week ending on or about July 13, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse operated by them at 858 East [illegible]nd Street, Brooklyn, New York, (the name of said person 314
being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

137. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

138. And so the Grand Jurors aforesaid, 315
upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Fiftieth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

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139. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

140. During the week ending on or about July 20, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count did pay to a person employed by them in the wholesale slaughterhouse
317 operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) wages amounting to less than 50¢ per hour for each hour worked by said employee, the exact rate per hour being to the Grand Jurors unknown, in violation of Article IV, Sections 1 and 2 of said Code.

141. Each and every allegation contained in paragraph 105 of this indictment is here realleged with the same force and effect as though here set forth in full.

318

142. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article IV, Sections 1 and 2 of said Code in transactions affecting interstate commerce, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Indictment

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EXCESSIVE HOURS

Fifty-first Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

143. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

320

144. During the week ending on or about May 25, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintainance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

321

145. Said violation and the transactions in which it occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, in the following manner, to-wit: Permitting such employees to work more than 48 hours per week enables the defendants herein to obtain unfair advantages over other slaughterhouse men and thereby encourages and causes other slaughterhouse men to engage in the same and all other

practices prohibited by said Code, and thereby obstructs and prevents the accomplishments of the purposes of said Code and said National Industrial Recovery Act, causes a disruption of the normal flow of the interstate commerce in live poultry coming into the State of New York from other states, and diverts substantial interstate shipments of live poultry.

146. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A.
323 L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Fifty-second Count

And the Grand Jurors aforesaid, upon their
324 oaths, do further present that:

147. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

148. During the week ending on or about June 1, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defandants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person

being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

149. Each and every allegation contained in paragraph 145 of this indictment is here realleged with the same force and effect as if here set forth in full.

326

150. And so the Grand Jurors aforesaid, upon their oaths do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4, and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Fifty-third Count

327

And the Grand Jurors aforesaid, upon their oaths, do further present that:

151. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

152. During the week ending on or about June 8, 1934 the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a

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person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

329 153. Each and every allegation contained in paragraph 145 of this indictment is here realleged with the same force and effect as if here set forth in full.

154. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code, in transactions affecting the interstate commerce in live poultry described in paragraph 2, 3, 4, and 5 of this indictment, against the peace and
330 dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Fifty-fourth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

155. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

156. During the week ending on or about June 15, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in 332 any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

157. Each and every allegation contained in paragraph 145 of this indictment is here realleged with the same force and effect as if here set forth in full.

158. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, 333 violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Fifty-fifth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

159. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15

of this indictment is here realleged with the same force and effect as though here set forth in full.

160. During the week ending on or about June 22nd, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East
335 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

161. Each and every allegation contained in paragraph 145 of this indictment is here realleged with the same force and effect as if here set forth in full.

336

162. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Indictment 337

Fifty-sixth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

163. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

164. During the week ending on or about June 29, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron 338
Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergncy, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

165. Each and every allegation contained in 339
paragraph 145 of this indictment is here realleged with the same force and effect as if here set forth in full.

166. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter, and Alex Schechter, violated Article III, Section 1 of the said Code in transactions affecting the interstate commerce in live poultry described in paragraph 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to

340 the form of the statute of the United States in such case made and provided.

Fifty-seventh Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

167. Each and every allegation contained in paragraph 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

341 168. During the week ending on or about July 6, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the 342 said violations occurring during a period other than Jewish holidays or legal holidays.

169. Each and every allegation contained in paragraph 145 of this indictment is here realleged with the same force and effect as if here set forth in full.

170. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section I of the said Code, in transactions affecting the interstate commerce in

live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Fifty-eighth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

171. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of 344
this indictment is here realleged with the same force and effect as though here set forth in full.

172. During the week ending on or about July 13, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street, Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work
at the said slaughterhouse in excess of 60 hours 345
per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

173. Each and every allegation contained in paragraph 145 of this indictment is here realleged with the same force and effect as if here set forth in full.

174. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, vio-

346 lated Article III, Section I of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided.

Fifty-ninth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

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175. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 of this indictment is here realleged with the same force and effect as though here set forth in full.

176. During the week ending on or about July 20, 1934, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, hereby made defendants in this Count, did cause and permit a person employed at the wholesale slaughterhouse operated by them at 858 East 52nd Street,

348 Brooklyn, New York, (the name of said person being to the Grand Jurors unknown) to work at the said slaughterhouse in excess of 60 hours per week, the said employee not being engaged in any emergency, maintenance or repair work and the said violations occurring during a period other than Jewish holidays or legal holidays.

177. Each and every allegation contained in paragraph 145 of this indictment is here realleged with the same force and effect as if here set forth in full.

Indictment 349

178. And so the Grand Jurors aforesaid, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter, violated Article III, Section 1 of the said Code in transactions affecting the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment, against the peace and dignity of the United States and contrary to the form of the statute of the United States in such case made and provided. 350

ILLEGAL SALES TO PERSONS NOT LICENSED

Sixtieth Count

And the Grand Jurors aforesaid, upon their oaths, do further present that:

179. Each and every allegation contained in paragraphs 1 to 8 inclusive and paragraph 15 is here realleged with the same force and effect as though set forth in full.

180. On repeated occasions during the period from May 16, 1934, up to and including the filing of this indictment, the exact date of said occasions being to the Grand Jurors unknown, the aforesaid A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter sold live poultry to Joseph Schechter and/or the Schechter Live Poultry Market, Inc., both of whom are persons not legally entitled to conduct the business of handling live poultry and not having a permit or license to handle, sell, or slaughter live poultry as is required by the ordinances of the City of New York and by the rules and regulations of 351

352 the Board of Health of the City of New York, which said sales were in violation of Article VII, Section 15 of said Code.

181. Said violations and the transactions in which they occurred affected and affect the interstate commerce in live poultry described in paragraphs 2, 3, 4 and 5 of this indictment in the following manner, that is to say: The purpose of Article VII, Section 15 of said Code, is to limit the marketing and distribution of live poultry in the Metropolitan Area to persons bound
353 by and complying with the health regulations of the City of New York and all other health regulations within the Metropolitan Area. The marketing and distribution of live poultry by other persons tends to encourage and increase the marketing, distribution and consumption of unfit poultry, fosters the existence of an undisciplined class of poultry dealers not readily subject to regulation by governmental bodies, and thereby causes the transportation in interstate commerce into the State of New York from other states
354 of substantial amounts of unfit poultry which would otherwise be destroyed prior to such interstate transportation, diminishes the interstate transportation of healthy and edible poultry, disrupts the normal and orderly flow of live poultry, and diverts substantial shipments thereof.

182. And so the Grand Jurors, upon their oaths, do present that defendants A. L. A. Schechter Poultry Corporation, Martin Schechter, Aaron Schechter and Alex Schechter violated Article VII, Section 15 of said Code in transactions affecting the interstate commerce, against the peace and dignity of the United

States and contrary to the form of the statute in such case made and provided.

Dated July 26, 1934.

A True Bill:
MEYER DOMBEK,
Foreman.

LEO J. HICKEY,
United States Attorney.

WALTER L. RICE,
Special Assistant to the Attorney General. 356

Docket Entries

C. 36041

7/26–34 Indictment filed.

Aug 1–34 Before Galston J. Defendants arraigned plea not guilty A L A Schechter Poultry Corp. enters a plea not guilty by its President Joseph Schechter, Schechter Live Poultry Inc. enters a Plea not guilty by its President Alex Schechter. Ten days allowed to defendants to withdraw Plea not guilty and make such motion as may be required. Bail fixed at 2500 each as to defts. Joseph and Alex Schechter and 1500 each as to Martin and Aaron Schechter. Defts. ordered to return Sept 5/34. 357

Aug 3–34 Notice of Appearance filed.

Aug 11–34 Demurrer filed.

Aug 14–34 Notice of Hearing of demurrer filed. Defendants withdraw Plea not guilty. Demurrer noted.

358 *Docket Entries*

Aug 16-34 Before Campbell J. Hearing on demurrer. Demurrer argued. Decision Reserved. Submit briefs by Aug 18-34.

Aug 28-1934 By Campbell J. Decision rendered overruling demurrer as to certain portions of indictment and sustaining demurrer as to others. (See opinion book)

Aug 30-1934—Notice of motion filed for a bill of particulars etc.

Aug 31-34 By Campbell J. Order on demurrer filed and entered.

359 Aug 31-1934 Before Campbell J Defts. present —plea not guilty. Def. A L A Schechter Corp enters a plea of not guilty by its president Joseph Schechter Deft. Schechter Live Poultry Market enters a plea of not guilty by its president Alex Schechter. Bail continued and appearances same. Defts ordered to return Sept 5-1934.

Sept 4-1934—Before Campbell J Hearing on motions for a Bill of particulars—Adjd to Sept 5-1934.

Sept 5-1934—Before Byers J. Hearing on mo-
360 tion for a bill of particulars—motion argued and submitted—Submit all papers by Sept 17-1934.

Sept 5-1934 Byers J. Defts. present ordered to return Sept 18-1934.

Sept 10-1934 By Byers J. Decision rendered denying motion for a bill of particulars etc. Settle order on 1 days notice. (See memo attached to papers.)

Sept 14-1934 By Byers J. Order filed and entered on motion for bill of particulars.

Sept 18-1934 Byers J. Defts. present ordered to return Sept 24-1934.

Docket Entries 361

Sept 20–1934 Notice that pltf will present proof upon counts 1-5 inclusive, counts 24 to 39 inclusive, and counts 41 to 60 inclusive upon trial of action.

Sept 24–1934 Byers J. Defendants present Ordered to return Oct 18-1934.

Oct 8–1934 Campbell J Defendants present ordered to return Oct 17-1934.

Oct 17–1934 Before Campbell J case called. Defts. present. Trial ordered. Mr. Heller moves to dismiss Counts 4 and 5. Motion denied. 362

Oct 18–1934 Trial adjd to Oct 18-1934 Before Campbell J. Case called. Defts. present. Trial resumed. Trial adjd. to Oct 19-1934.

Oct 19–1934 Before Campbell J. Case called. Defts. present. Trial resumed and adjd to Oct 22/34 at 10 A. M.

Oct 22–1934 Before Campbell J. Case called—defts. present—trial resumed and adjd to Oct 23-1934.

Oct 23–1934 Before Campbell J. case called—defts. present. Trial resumed and adjd to Oct 24, 1934. 363

Oct 24–1934 Before Campbell J. Case called. Defts. present. Trial resumed. Mr. Heller moves for a directed verdict. Motion denied. Mr. Heller moves to dismiss the indictment. Motion denied. Trial adjd to Oct 25-1934 at 12 noon.

Oct 25–1934 Before Campbell J. Case called defts. present—trial resumed and adjd to Oct 26-1934.

Oct 26–1934 Before Campbell J. Case called. defts. present trial resumed. Trial adjd to Oct 29-1934-10 A. M.

364 *Docket Entries*

Oct 29–1934 Before Campbell J. Case called. defts present. trial resumed and adjd to Oct 30-1934.

Oct 30–1934 Campbell J. Case called Defts. present—Trial resumed. Mr. Heller renews motion to dismiss the indictment. Motion granted as to counts 45-47-49-50-54-56-58 and 59.

Oct 31–34 Trial adjd. to Oct 31-34 by Campbell J. Order for sustenance filed and entered.

365 Oct 31–1934 Campbell J.—Case Called. Defts. present. Trial resumed. Jury not having reached a verdict at 11:30 P. M. The court declares a recess until Nov 1-1934 at 10 A. M.

Nov 1–1934 By Campbell J. Order filed and entered for proper Lodging, etc.

Nov 1–1934—Before Campbell J.—case called Defts. present. Trial resumed. Jury return and rendered a verdict of guilty as to each of counts 1-2-4-5-24-25-26-27-28-29-30-31-32-33-38-39-46 and 55 and 60 as to each of defts named in each of said counts and not guilty as to counts 3-34-35-36-37-41-42-43-44-48-51-

366 52-53 and 57 as to each deft. named. Mr. Heller moves to have Jury poled. Motion granted. Jury poled and each render a verdict as given by the foreman on consent of Mr. Heller. Mr. Heller moves to have verdict set aside. Motion denied. Defts. continued on bail to Nov 7-1934 for sentence. Oct. Term extended to and including Nov 7-1934.

Nov 7–1934 Campbell J. Defts. present. Sentence adjd to and defts. ordered to return Nov 9-1934 at 10:30 A. M.

October Term 1934 extended to and including Nov 9-1934.

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Nov 9–1934 Before Campbell J. Defts. present.
Defts. Joseph Schechter sentenced to be imprisoned for 3 months and to pay a fine of $1000 on count one without costs and stand committed and to pay a fine of $100 on each of counts 27-28 and 39 without costs and stand committed.
Deft. Martin Schechter sentenced to be imprisoned for one month and to pay a fine of $500 on count one without costs and stand committed and to pay a fine of $100 on each of counts 2-4-5-24-25-26-29-30-31-32-33-38-39-46-55 and 60 without costs and stand committed. Deft. Alexander Schechter sentenced to be imprisoned for 2 months and to pay a fine of $500 on count one without costs and stand committed and to pay a fine of $100 on each of counts 4-5-25-31-32-33-39-46-55 and 60 without costs and stand committed. 368
Deft Aaron Schechter sentenced to be imprisoned for 1 month and to pay a fine of $500 on count one without costs and stand committed and to pay a fine of $100 on each of counts 2-4-5-24-25-26-29-30-31-32-33-39-46-55 and 60 without costs and stand committed. 369
Deft. A. L. A. Schechter Poultry Corp. sentenced to pay a fine of $25 on each of counts 1-2-4-5-24-25-26-29-30-31-32-33-38-39-46-55 and 60 without costs.
Deft. Schechter Live Poultry Market Inc. sentenced to pay a fine of $25 on each of counts 1-27-28 and 39 without costs—sen-

370 *Docket Entries*

tence of imprisonment on count 1 as to each deft. to be executed in Detention Headquarters N. Y. City. Writs of committment issued.

Nov 9–1934—By Campbell J Order filed and entered fixing bail of deft. Joseph Schechter at $4000 of deft Martin Schechter at $3000 —of deft Aaron Schechter at $3000 and of deft Alex Schechter at $4000—

Nov 9–1934 Notice of appeal filed.

371 Nov 10–1934 Copy of notice of appeal together with Clerk's statement mailed to Clerk U S Circuit Court of Appeals.

Nov 10–1934 By Campbell J Order filed and entered directing attorneys to appear before Judge on Nov 15-1934 at 10 A. M.

Nov 10–1934 Certified copy of order of Nov 10-1934 mailed to atty. for appellants and another certified copy served on U. S. Attys office.

Nov 22–1934 Filed Assignments of Error.

Dec 6–1934 Filed order extending defendants time to file and settle bill of exceptions.

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Demurrer

IN THE DISTRICT COURT OF THE UNITED STATES

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

against

A. L. A. SCHECHTER POULTRY CORPORATION, SCHECHTER LIVE POULTRY MARKET, JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, and AARON SCHECHTER.

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COMES NOW, the Defendants, A. L. A. Schechter Poultry Corporation, Schechter Live Poultry Market, Joseph Schechter, Martin Schechter, Alex Schechter and Aaron Schechter, by their attorney, Joseph Heller, and by leave of Court first had and obtained, the following defendants, to wit:— A. L. A. Schechter Poultry Corporation, Schechter Live Poultry Market, Joseph Schechter, Martin Schechter, Alex Schechter, and Aaron Schechter, withdraw their plea of not guilty heretofore entered herein, and file their demurrer to the indictment herein:

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All of the defendants herein demur without waiving the right to plead not guilty, to the indictment in the above entitled cause and say that the indictment herein and the matters and things therein set forth are as therein set forth and alleged not sufficient in law to compel them to answer thereto, and all of the defendants herein therefore demur to each and every of the sixty

376 *Demurrer*

separate counts thereof, severally without specifically repeating their objections to each of said counts by special and separate reference thereto, on the following grounds and for the following reasons to wit:

AS TO ALL OF THE COUNTS

I. For that the said acts charged in the said indictment have no connection with Interstate Commerce made unlawful by any statute of the
377 United States.

II. Said indictment is too general, vague, indefinite, and uncertain that it could not be pleaded as res adjudicata or former jeopardy.

III. That all of said counts do not charge or accuse any or all of the defendants with the commission of any Federal offense, and wholly fail to state any offense against the laws of the United States of America.

IV. That said indictment and each and every
378 count thereof does not set forth the necessary elements of the offense which is sought to be charged.

V. Said indictment and each count thereof are too general, vague and indefinite and does not sufficiently advise the said defendants to the charges against them that they may prepare their defense.

VI. Attempted Statements of Fact seeking to show a connection of these defendants with an alleged conspiracy are conclusions of law and not statement of facts.

VII. The said indictment is insufficient to allege a conspiracy to violate the law of the United States in that the alleged conspiracy relates solely to intrastate commerce and the defendants are likewise solely engaged in intrastate commerce.

VIII. No facts are alleged in the indictment from which it can be determined that the poultry actually sold by the defendants were being moved or transported by defendants in interstate commerce or were a shipment or part of a shipment 380
being transported in interstate commerce.

IX. The indictment contains conclusions of the pleader and does not state facts upon which such conclusion is based.

X. The indictment does not allege the object or purpose of the conspiracy and the alleged object of the offense against the United States.

XI. Each count is duplicitous.

XII. The alleged conspiracy relates to matters entirely within the jurisdiction of the laws 381
of the State of New York, and not within the inhibition of any laws of the United States of America.

XIII. The indictment is vague and indefinite and uncertain in what manner such conspiracy restrained interstate commerce.

XIV. The law which is claimed to have been violated by these defendants is unconstitutional and void in that it violates the Eighth Amendment to the Federal Constitution in that it imposes excessive fines, and cruel and unusual punishment is inflicted.

382 *Demurrer*

XV. The code, orders and regulations, which is alleged to have been violated by the defendants herein is unconstitutional and void in that such code, orders, rules and regulations, made and provided, is the exercise by the President, Code Administrator, Code Authority, Code Supervisor, Boards and Committees, their agents and representatives, of legislative power as distinguished from administrative acts of investigations and regulation, all legislative powers by Article I Section 1 of the Constitution being
383 vested in Congress and which legislative power may not be abdicated or delegated by Congress.

XVI. Section 3 Subdivision b7 of the act of June 16–1933, National Industrial Recovery Act and Executive Order Approving of the Code date as of April 13–1934, purporting to prohibit under penalty of fine and imprisonment the violation of the same are unconstitutional and void as repugnant to the Fifth Amendment to the Constitution, provideng that "No person shall be deprived of * * * liberty or property without due
384 process of law; the declaration by this act that a serious emergency exists is unconstitutional and void as repugnant to the Fifth Amendment, in so far as the declaration of such emergency affects the Constitutional rights of any person; for the reason that the Constitution does not contain any such power to so legislate, or to suspend or limit Constitutional guarantees by virtue of any declared emergency.

XVII. The executed orders and the Code referred to in this indictment are unconstitutional and void or repugnant to Article I, Section I of the United States Constitution, being an at-

tempted exercise of an authorized delegation of legislative power to the President, Code Authorities, and persons designated by the President to carry out the power and in so far as such attempted exercise of unauthorized delegation of legislative power affects the Constitutional rights of any person, such acts, orders and codes are further repugnant to the Fifth Amendment.

XVIII. The defendants specifically demur to counts 6 to 23 inclusive, 34, 35, 36, 37, 39, and 41 to 60 inclusive, as not stating any violation of 386
the Code or crime set out in the indictment, this without prejudice to the General Demurrer to the entire indictment as heretofore set out.

WHEREFORE, the defendants Joseph, Martin, Alex, and Aaron Schechter, and A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc. pray judgment that such indictment and each of the counts thereof, be dismissed and quashed, and that the demurrer be sustained.

Respectfully submitted, 387

JOSEPH HELLER,
Attorney for Defendants,
Office & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
City of New York.

388 **Order Sustaining Demurrer in Part and Overruling in Part**

At a Stated Term of the United States District Court held in and for the Eastern District of New York, at the Federal Building, Borough of Brooklyn, City, State and Eastern District of New York, on the 31st day of August, 1934.

Present—Hon. MARCUS B. CAMPBELL,
389 *United States District Judge.*

UNITED STATES OF AMERICA, *Plaintiff,* *against* JOSEPH SCHECHTER, *et al.*, *Defendants.*	Cr. 36041

390 A demurrer having been filed by the above named defendants to the indictment herein, and the same having come on to be heard before me, and after hearing Joseph Heller, Esq., in support of said demurrer and Leo J. Hickey, Esq., United States Attorney for the Eastern District of New York by Walter L. Rice, Special Assistant to the Attorney General, of counsel, in opposition thereto, and after reading and filing all papers, and after due deliberation, it is

ORDERED, that the demurrer be sustained as to that portion of the indictment denominated as Sixth Count to Twenty-Third Count both in-

clusive, being Eighteen counts in all, and to the Fortieth Count, and the demurrer is in all other respects, and as to all other Counts, overruled, with exceptions to all of the defendants and the United States of America.

MARCUS B. CAMPBELL,
United States District Judge.

Decision 392

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

against

JOSEPH SCHECHTER, *et al.*

Criminal 36041
August 28, 1934

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Leo J. Hickey, United States Attorney.
Harold M. Stephens, Assistant Attorney General.
Walter L. Rice, Special Assistant to the Attorney General, of counsel for the United States.

Joseph Heller, attorney for defendants.
Joseph Heller and Jacob E. Heller, of counsel.

CAMPBELL, *D. J.*

On July 26, 1934, the grand jury of this district returned an indictment against six defendants, Joseph, Martin, Alex and Aaron Schechter,

394 A. L. A. Schechter Poultry Corporation, and Schechter Live Poultry Market, Inc., charging conspiracy to violate the National Industrial Recovery Act and the Code of Fair Competition for the Live Poultry Industry, for the Metropolitan Area in and about the City of New York, and substantive violations thereof.

The Code of Fair Competition for the Live Poultry Industry for the Metropolitan Area in and about the City of New York was approved by the President of the United States, on April 13, 1934, and it became effective on April 23, 1934, and is divided into eight Articles.

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Article 1 deals with the purposes of the code: Article 2 defines certain terms used in the code; Article 3 deals with the hours which employees may be engaged in the industry; Article 4 deals with the scale of wages to be paid to employees of the industry; Article 5 deals with general labor provisions which are to govern the industry; Article 6 deals with administrative matters concerning the industry; Article 7 provides for certain trade practices which the code prohibits; Article 8 deals with general provisions respecting the industry.

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The defendants were arrested, pleaded not guilty, and were released on bail, and in pursuance of leave given, they have withdrawn their pleas of not guilty and filed a demurrer to the indictment.

The indictment contains what are alleged as sixty counts.

The defendants are each charged with the violation of the counts, the numbers of which are placed after their names:

Joseph Schechter, Counts 1, 27, 28, 37, 39, 40.

Martin Schechter, Counts 1-26, both inclusive, 29-36, both inclusive, 38-60, both inclusive.

Alex Schechter, Counts 1, 4-23, both inclusive, Counts 25, 31-33, both inclusive, 35 and 36, 39-60, both inclusive.

Aaron Schechter, Counts 1 and 2, 4-26, both inclusive, 29-33, both inclusive, 35 and 36, 39-60, both inclusive.

A. L. A. Schechter Poultry Corporation, Counts 1-26, both inclusive, 29-33, both inclusive, 38-60, both inclusive.

Schechter Live Poultry Market, Inc., Counts 1, 27, 28, 39, 40. 398

The first count charges all of the defendants with conspiracy to commit various offenses against the United States (R. S. 5440; 18 U. S. Code, 88) by agreeing and conspiring (a) to sell poultry unfit for human consumption, (b) to sell uninspected poultry, (c) to engage in the practice of "selective killing", (d) to intimidate Code Authority Investigators, (e) to file false and fictitious sales reports, (f) to decline to furnish reports on hours worked by employees, (g) 399 to pay illegal wages, (h) to permit employees to work excessive hours, and (i) to obstruct the Code Supervisor from carrying out his duties.

The remaining fifty-nine counts charge as separate substantive offenses substantially the same violations as those involved in the conspiracy count as follows, the Article and Section of the Code of the Industry alleged to be violated being as follows:

Counts 2 and 3 deal with sales of unfit poultry (Article 7, Section 2); Counts 4 to 23 deal with sales of uninspected poultry (Article 7, Section 2); Counts 24 to 33 deal with violations of

straight killing (Article 7, Section 14); Counts 34 to 37 deal with threats, coercion, and intimidation (Article 7, Section 21).

Count 38 deals with false report (Article 6, Sections 1 and 2; Article 8, Section 3).

Count 39 deals with withholding sales reports (Article 8, Section 3).

Count 40 deals with withholding reports of hours worked (Article 3, Section 4); Counts 41 to 50 deal with illegal wages (Article 4, Sections 1 and 2); Counts 51 to 59 deal with excessive hours (Article 3, Section 1); Count 60 deals with illegal sales to persons not licensed (Article 7, Section 15).

The demurrer filed by the defendants sets forth eighteen grounds, and following the method pursued by counsel for the Government, I will classify them for discussion as follows; placing in parentheses the number of the paragraph of defendants' demurrer being considered.

I. *Recovery Act and Code Unconstitutional:*

1. Section 3 (f) of the Act violates Fifth Amendment; and national emergency does not warrant depriving persons of constitutional rights. (16).

2. Act violates Eighth Amendment by imposing fines. (14).

3. Improper delegation of power in violation of Sec. 1, Art. 1, of Constitution. (15).

4. Improper delegation of power in violation of the Fifth Amendment. (17).

II. *No Interstate Commerce.*

1. Indictment charges no connection with interstate commerce made unlawful; i. e., Code is ultra vires the Act. (1).

2. Conspiracy relates solely to intrastate commerce and defendants are engaged in intrastate commerce. (7).

3. No allegation that poultry sold by defendants was moving in interstate commerce. (8).

4. Conspiracy relates to state laws rather than federal. (12).

III. *No Violation of Any Federal Statute.*

1. Counts fail to state Federal cause of action. (3).

2. Elements of offense not charged. (4).

IV. *Indictment Defective.*

1. Too vague and general to be pleaded as res judicata or former jeopardy. (2).

2. Too vague and general to prepare defense. (5).

3. States conclusions as to conspiracy rather than the facts thereof. (6).

4. Object of conspiracy and offense not alleged. (10).

5. Vague as to how conspiracy restrained interstate commerce. (13).

6. Plender states conclusions without facts on which they are based. (9).

7. Each count is duplicitous. (11).

8. Counts 6-23, both inclusive, 34, 35, 36, 37, 39, 41-60, both inclusive, do not allege violations of the code. (18).

The National Industrial Recovery Act (Act of June 16, 1933, Title 15 Ch. 15, Sections 701 to 712 inclusive, U. S. C.), is based on the Commerce Clause of the Constitution, not the Wel-

fare Clause, and the first question to be considered is, whether the Act is a valid exercise of the power of Congress to regulate commerce among the states.

The national powers such as the commerce power are supreme in the field. Railroad Commission of Wisconsin *v.* Chicago, B. & Q. R. R. Co., 257 U. S. 563. Congress in the exercise of its major powers, including the commerce power, has incidental powers tantamount to the police
407 power of a State. Hoke *v.* United States, 227 U. S. 308; Hamilton *v.* Kentucky Distilleries Co., 251 U. S. 146, 156, 157. Congress is the sole judge of the necessity of its laws, Farmers' and Mechanics' National Bank *v.* Dearing, 91 U. S. 33, and the courts have refused uniformly to question the means adopted by Congress to accomplish its purposes. McCulloch *v.* Maryland, 4 Wheat. 418; Legal Tender Case, 110 U. S. 421, 441.

Within the limits of the commerce power, Congress is no more restricted by the Fifth Amend-
408 ment than are State legislatures by the Fourteenth Amendment. Nebbia *v.* New York, 54 S. Ct. 505, 291 U. S. 502, 537; Calhoun *v.* Massie, 253 U. S. 170, 175.

If the Recovery Act is to be declared obnoxious to the Fifth Amendment, it can only be because there is an unreasonable, arbitrary, or capricious regulation, or if its provisions bear no real or substantial relation to the object sought to be attained.

The first section of the Recovery Act provides:

> "A national emergency productive of widespread unemployment and disorgan-

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> ization of industry, which burdens interstate and foreign commerce, affects the public welfare, and undermines the standards of living of the American people is hereby declared to exist."

This declaration of an emergency contained in the Act is not conclusive upon the courts, but is entitled to great respect, Block *v.* Hirsch, 256 U. S. 135, and the national emergency so declared has been noticed by the courts. Appalachian Coals, Inc. *v.* United States, 288 U. S. 410 344; United States *v.* Spotless Dollar Cleaners, Inc. (S. D. N. Y., March 31, 1934).

An emergency does not create power, but it may furnish the occasion for the exercise of power conferred by the Constitution. Home Building & Loan Assn. *v.* Blaisdell, 78 L. Ed. 255, 290 U. S. 398.

Following the declaration of the emergency is set forth, the purposes of the Act, and these findings by Congress, incorporated as they are in the body of the Act, must be given full recognition. Hill *v.* Wallace, 259 U. S. 44; Chicago 411 Board of Trade *v.* Olsen, 262 U. S. 1; Stafford *v.* Wallace, 258 U. S. 495; Nebbia *v.* New York, supra; Block *v.* Hirsch, supra; United States *v.* Calistan Packers, 4 Fed. Supp. 660.

Section 3 (f) of the Recovery Act provides:

> "When a code of fair competition has been approved or prescribed by the President under this chapter, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be

> fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense."

Penalty statutes of this character have been upheld as valid. United States *v.* Clyde S. S. Co., 36 Fed. (2d) 691. Cert. Denied, 281 U. S. 744.

Penalties for recurrent violations do not make fines excessive. Badders *v.* United States, 240 U. S. 391; Gulf, Colorado, &c. Ry. *v.* Texas, 246
413 U. S. 58.

I do not overlook the fact that a statute may be obnoxious which imposes penalties so great, or conditions so onerous, that no one will dare test its constitutionality, for fear that his opinion may be wrong and the severe penalty be inflicted. Ex parte Young, 209 U. S. 123; but that is not the situation here.

See Waters-Pierce Oil Co. *v.* Texas, 212 U. S. 86, in which the Supreme Court held that, in view of the fact that the defendant's assets were valued at more than $40,000,000, penalties of
414 $1,623,500 imposed by a Texas Court were not excessive, even though most of the penalties imposed accumulated at the rate of $1500 per day.

This point seems to be raised prematurely if defendants merely fear that the aggregate sentence that may be imposed may be excessive. Wadley Southern R. *v.* Georgia, 235 U. S. 651, 662.

The provision for a $500 fine for each offense does not violate the Fifth and Eighth Amendments.

The only delegation of powers involved in this case is the President's approval of the Code, and

we are not concerned with any delegation of powers which include orders, regulations and rules suggested by the defendants.

The first section of the Act declares the policy of Congress to be:

> "To remove obstructions to the free flow of interstate and foreign commerce which tend to diminish the amount thereof; and to provide for the general welfare by promoting the organization of industry for the purpose of cooperative action among trade groups, to induce and maintain united action of labor and management under adequate governmental sanctions and supervision, to eliminate unfair competitive practices, to promote the fullest possible utilization of the present productive capacity of industries, to avoid undue restriction of production (except as may be temporarily required), to increase the consumption of industrial and agricultural products by increasing purchasing power, to reduce and relieve unemployment, to improve standards of labor, and otherwise to rehabilitate industry and conserve natural resources."

Section 3 (a) of the Act provides:

> "Upon the application to the President by one or more trade or industrial associations or groups, the President may approve a code or codes of fair competition for the trade or industry."

Section 3 (b) provides that such approved codes

418 shall be "the standards of fair competition for such trade or industry".

The code of fair competition here alleged to be violated was approved by the President April 13, 1934, after joint hearings conducted by the Agricultural Adjustment Administration and the Industrial Recovery Administration.

This brings us to the real question at issue, whether Congress by the provisions of Section 1 of the Act, supra, has set up adequate standards to warrant the delegation of power involved
419 in the President's act in approving the code. Hampton & Co. *v.* United States, 276 U. S. 394.

Article 1, Sec. 1, of the Constitution provides:

> "All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Congress may, without improperly delegating legislative power, set up a general standard and delegate to administrative bodies the power to make such standard effective. Field *v.* Clark, 143
420 U. S. 649; Buttfield *v.* Stranahan, 192 U. S. 470; Union Bridge Co. *v.* United States, 204, U. S. 364; United States *v.* Grimaud, 220 U. S. 506.

The courts have frequently recognized the necessity of delegating substantial powers to carry out the legislative intent.

In Hampton & Co. *v.* United States, supra, a delegation of power to the President to reclassify tariff duties established by the Tariff Act of 1922, after investigating the difference between foreign and domestic costs of production, and other competitive factors, was sustained.

In Field *v.* Clark, supra, there was sustained the delegation of power to the President, to sus-

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pend the free importation of certain commodities which he might "deem to be reciprocally unequal or unreasonable" where foreign countries were imposing duties on American products.

In Buttfield *v.* Stranahan, supra, the Tea Inspection Act of 1897, authorizing the Secretary of the Treasury to establish standards of purity for imported tea, and to exclude all teas not measuring up to such standards, was sustained.

In United States *v.* Grimaud, supra, there was sustained the power given to the Secretary of Agriculture, in a forestry conservation statute, to regulate the occupancy of, and use of, a reservation, and to preserve the forest thereon from destruction, and punishment was provided for violation thereof.

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In Norwegian Nitrogen Co. *v.* United States, 288 U. S. 294, there were approved the flexible provisions of the Tariff Act of 1922.

In Intermountain Rate Cases, 234, U. S. 476, a delegation of broad discretionary powers in reference to the long and short haul clause was upheld.

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In Avent *v.* United States, 266, U. S. 127, there was approved the power delegated to the Interstate Commerce Commission to grant certain preferences.

In Union Bridge Co. *v.* United States, 204 U. S. 364; Monongahela Bridge *v.* United States, 216 U. S. 177; the delegation of power to the Secretary of War to require alteration or removal of bridges which unreasonable obstruct navigable water, was sustained.

In Ryan *v.* Amazon Petroleum Corporation, 71 Fed. 2nd, 1, 7 (C. C. A. 5, May 29, 1934, there was sustained the broad power vested in the

424 President under Section 9 (c) of the Industrial Recovery Act, to prohibit transportation of excess oil, and the redelegation of that power to the Secretary of the Interior, in accordance with Section 2 (a) of the Act.

No redelegation of power is involved in this case.

In United States *v.* Calistan Packers, supra, the District Court for the Northern District of California upheld the delegation of power by the Agricultural Adjustment Act to the Secretary of
425 Agriculture, to issue licenses to persons engaged in handling agricultural commodities, and providing for revocation and fines of $1000. per day for violation thereof.

Not only would it be impracticable, but virtually impossible, for Congress to perform the duties which it delegated to the President and his agents. The investigations, hearings, negotiations, enactment of codes and code amendments for the very large number of industries, operating under dissimilar conditions and requiring different treatment, require immediate at-
426 tention, and to require Congress to assume those duties would seriously interfere with, if it did not deprive it of its power to effectively regulate commerce.

I am not unmindful of, nor have I overlooked the cases cited on behalf of the defendants, to which I make no reference.

It is beyond dispute that Congress cannot delegate legislative power to the President, therefore it is unnecessary to discuss the cases cited by defendants in support of that contention, Field *v.* Clark, supra, and Hampton *v.* United States, supra, cited by defendants on the ques-

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tion of delegation of power, have been considered by me and cited in support of my opinion.

The United States *v.* Bob Lieto, United States District Court, Northern District of Texas, February 16, 1934, cited by the defendants, from the observation quoted, "The controversy herein is between a humble person who asserts his right to carry on his little business in a local community, and in a local fashion, without being arrested and punished for a mythical indirect effect upon interstate commerce", shows that the facts

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in that case are clearly distinguishable from those in the case at bar.

The citation by defendants of an opinion by U. S. D. J. Dawson, of Louisville, Kentucky (May 18, 1934), without stating the name of the case or where reported, makes it impossible for this Court to do more than say, that from the quotations in defendants' brief, that opinion was based largely upon the General Welfare Clause of the Constitution, which is not in issue here.

In United States *v.* Suburban Motor Service Corporation, 5 Fed. Supp. 798, the National Industrial Recovery Act was not declared unconstitutional. At page 802 Judge Barnes says:

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> "But, while the principle that legislative power may not by Congress be delegated to other agencies of government has been frequently announced, yet decisions which have held acts of Congress invalid because of violation of the principle are difficult or impossible to find. Accordingly, this court, being one of the inferior courts contemplated by the Constitution, does not feel justified in declaring the act in question invalid because of the violation of the

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> principle of constitutional law prohibiting the delegation of legislative power."

In Amazon Petroleum Corporation *v.* Railroad Commission, 5 Fed. Supp. 639, cited by defendants, Judge Bryant, at page 649, said:

> "Entertaining as I do the gravest misgivings, if not the absolute certainty of conviction, that this provision of the act is invalid by reason of its delegation to
431 the Executive of legislative authority, yet conceding it for the purpose of the decision to be valid, it is obvious that the President and his agents in their rules and regulations could exercise no greater authority nor to any greater extent than that which was exercised by Congress itself."

It is to be observed that in that case the act was not decided to be unconstitutional.

In United States of America *v.* Splotless Dollar Cleaners, Inc., supra, Judge Knox said:

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> "To the end that these purposes might be accomplished, the President was vested with broad and comprehensive powers. With the right of Congress to make such delegation, there can be in my opinion, no reasonable dispute."

These are all of the decisions on the law in question brought to my attention, or that I have found, and I am in agreement with Judge Knox of this Circuit.

The defendants' argument, based on the use of the word "code" in the Recovery Act, does not seem to me to be determinative. It is the sub-

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stance of the power granted, not the name given to it, that is of moment, and the question of the right of Congress to grant the power to the President has been fully discussed.

Defendants' contention that codes must be uniform throughout the country, strikes at the root of the regulation proposed.

It seems to me that uniformity between members of the same class is sufficient, and that is attained.

The only questions before this Court are questions of law. 434

The emergency existed. The selection of the remedy and the method of enforcement rested with Congress, which has spoken, and I am convinced that the Congressional policy and standards are sufficiently set forth in the Recovery Act; and that the power delegated to the President by said Act, by Section 3 (a) was properly delegated under the Constitution.

The National Industrial Recovery Act is an emergency measure, for a fixed period (Section 702, subdiv. c) and as such does not violate the Constitution. 435

Without repeating here the allegations of the indictment, it seems to me that interstate commerce in live poultry is fully described in paragraphs 2, 3, 4 and 5 of the indictment, which are in Count 1, and by reference are incorporated in all other Counts. Counts 4 and 5 and what are denominated as Counts 6 to 23, both inclusive, deal with poultry trucked into New York from Pennsylvania by the defendants, and immediately sold by them. In them it is alleged that the defendants are themselves engaged in interstate commerce, and that the transaction of sale at

436 their wholesale slaughter houses in Brooklyn, New York, occurred while the poultry were still moving in interstate commerce. This contention that such first sales within the State are in interstate commerce is indicated by the decision in Greater New York Live Poultry Chamber of Commerce et al. *v.* United States, 47 Fed. (2d) 156. In that case the Circuit Court of Appeals of this Circuit, upon the assumption that the commission men were purchasers, rather than agents of the Western shippers, held that the sales by
437 them to the wholesale slaughter houses were sales in interstate commerce. When, as in this case, it is alleged that the defendants themselves trucked the poultry into the State of New York, instead of purchasing it from New York commission men, it seems to me that the first sale is analogous to the commission men's sale in Greater New York Live Poultry Chamber of Commerce et al. *v.* United States, supra. See also Peoples Gas Co. *v.* Public Service Commission, 270 U. S. 550; Binderup *v.* Pathe Exchange, Inc., 263 U. S. 291; Swift & Company *v.* United States,
438 196 U. S. 375.

As to the remaining thirty-nine substantive Counts, it is not alleged that the violations and transactions in which they occurred were in interstate commerce, but that the transactions in which they occurred affect interstate commerce.

The poultry to which these counts relate was purchased by the defendants from the New York commission men. The interstate movement of the poultry ceased prior to the sale by the defendant wholesalers.

In each count the allegation as to the general interstate commerce in live poultry, and the effect

439

of the violations upon commerce, are sufficiently alleged.

Counts 41-50, both inclusive, relating to payment of illegal wages, and Counts 51-59, both inclusive, relating to excessive hours, all contain allegations that such violations enable defendants to obtain unfair advantages over competing wholesalers, encourage and cause other wholesalers to engage in the same practice, and all other practices prohibited by the code, and thereby obstruct and prevent the accomplishment of the purposes of the Code and the Recovery Act, cause a disruption in the normal flow of interstate commerce in live poultry, and divert interstate shipments thereof.

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Counts 34-37, both inclusive, relating to coercion and intimidation; Count 38, relating to false reports; and Counts 39-40, both inclusive, relating to withholding reports, are alleged to obstruct the enforcement and defeat the purposes of the Code, and thereby cause competitive evils disrupting the normal and orderly flow of interstate commerce in poultry. The allegations in each of these counts as to the disruption of the normal and orderly flow of interstate commerce in poultry are sufficient.

441

Counts 24-35, both inclusive, relating to the straight killing provision of the Code are alleged to defeat the purposes of the Code, cause interstate shipments of ungraded poultry, demoralize the price structure and diminish shippers' returns. The allegations in each of these counts are sufficient.

Counts 4 and 5, and the portion denominated as Count Sixth to Count Twenty-third, both inclusive, relate to the sale of uninspected poultry.

442 The allegations as to the effect on interstate commerce of selling uninspected poultry seem to me to be much more direct.

Count 60, relating to sales to persons not licensed, contain sufficient allegations as to the effect on interstate commerce.

Counts 2 and 3, relating to the sale of poultry unfit for human consumption, as alleged, present cases in which the effect upon interstate commerce is very direct.

443 That proof of some allegations in some counts may be difficult furnishes no reason for rejecting the counts, as all questions relating to the proof are to be determined on the trial.

The first count alleging conspiracy is alleged with great detail and is sufficient to charge the crime.

In an indictment for conspiracy it is not necessary to charge the object of the conspiracy with the same particularity as in the charge of the substantive offense.

Section 3 (f) of the National Recovery Act (40 U. S. C. 413) provides as follows:

444

> "When a code of fair competition has been approved or prescribed by the President under this chapter, any violation of any provision thereof in any transaction in or affecting interstate or foreign commerce shall be a misdemeanor and upon conviction thereof an offender shall be fined not more than $500 for each offense, and each day such violation continues shall be deemed a separate offense."

By the use of the words "or affecting interstate commerce," it is apparent that Congress

intended to assume all of the jurisdiction that it had under the commerce clause of the Constitution.

The indictment sufficiently alleges Interstate Commerce and the effect of violations on such Commerce Clause, as required by the Act.

It is immaterial whether or not the poultry was moving in interstate commerce at the time of the violations, if Congress had constitutional power to prohibit conduct "affecting" interstate commerce in the manner alleged in the indictment. 446

By Article 1, Section 8, of the Constitution, there is conferred upon Congress the power "To regulate Commerce with foreign Nations, and among the several States," and "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

Although the Federal Government is one of the enumerated powers, its enumerated powers are supreme and paramount to the reservation of state powers. 447 Ryan *v.* Amazon Petroleum Corporation, supra; Gibbons *v.* Ogden, 9 Wheat. 1; Houston & Texas Ry. *v.* United States, 234 U. S. 342; Wisconsin R. R. Comm. *v.* C. B. & Q. R. R. Co., 257 U. S. 563; Colorado *v.* United States, 271 U. S. 153; United States *v.* N. Y. Central R. R., 272 U. S. 457; Alabama *v.* United States, 279 U. S. 229; Minnesota Rate Cases, 230 U. S. 352.

Under the Commerce Clause Congress may regulate local transactions burdening or inextricably intermingled with interstate commerce. Local 167 *v.* United States, 291 U. S. 293; Swift & Company *v.* United States, supra; Stafford *v.* Wal-

lace, supra; United States *v.* Ferger, 250 U. S. 199.

Congress may regulate intrastate commerce if necessary to make effective its regulation of interstate commerce. Wisconsin R. R. Comm. *v.* C. B. & Q. R. R. Co., 257 U. S. 563; Minnesota Rate Case, supra; United States *v.* N. Y. Cent. R. R., 272 U. S. 457; Alabama *v.* United States, supra.

Congress has never before legislated as to gen-
449 eral trade practices merely "affecting" interstate commerce.

That, however, does not show that it does not have the power.

As I have before said, the Recovery Act is an emergency measure and represents a change in social theory.

That theory applied by the Sherman Anti-Trust Act was that competition would best preserve a free and orderly flow of interstate commerce, while by the Industrial Recovery Act, that social theory has been modified by the provision
450 of a system of supervised regulation of trade practices affecting interstate commerce.

With the choice of means we have no concern; that rests with Congress, and it well may be that in the emergency things which were of small importance in normal times, have now become of considerable importance, requiring a wider exercise of power.

The only question now to be considered is whether Congress had constitutional power to prohibit conduct "affecting" interstate commerce.

In Gibbons *v.* Ogden, supra, which was the first case in which the Commerce Clause was considered, Chief Justice Marshall, at page 9, said:

"It is the power to regulate; that is, to prescribe the rule by which commerce is to be governed. This power, like all others vested in Congress, is complete in itself, may be exercised to its utmost extent, and acknowledges no limitations other than are prescribed in the Constitution."

And at pages 7 and 8, he said:

"It is not intended to say that these words comprehend that commerce which is 452
completely internal, which is carried on between man and man in a State, or between different parts of the same State, and which does not extend to or affect other States • • •"

"• • • The genius and character of the whole government seem to be, that its action is to be applied to all the external concerns which affect the States generally; but not to those which are completely within a particular State, which do not affect other States, and with which it is not 453
necessary to interfere, for the purpose of executing some of the general powers of the government."

The Sherman Anti-Trust Act prohibits conspiracies "in restraint of trade or commerce", and has been interpreted as applying only to conspiracies unreasonably or substantially restraining interstate commerce. Standard Oil Co. *v.* United States, 221 U. S. 1; United States *v.* American Tobacco Co., 221 U. S. 601.

In the Recovery Act the intent of Congress was to extend criminal jurisdiction so as to reach

454 all cases where violations of approved codes affect interstate commerce, whether or not they substantially or unreasonably restrain such commerce.

Of course, the violations must substantially affect interstate commerce and not be merely incidental.

Notwithstanding the difference between the Sherman Act and the Recovery Act, the following cases under the former Act seem to me to show the constitutional power of Congress to
455 regulate conduct affecting interstate commerce.

In Stafford *v.* Wallace, 258 U. S. 495, the validity of the Packers and Stockyards Act, which empowered the Secretary of Agriculture to regulate stockyards so as to prevent unfair practices and monopoly, to fix commission charges, to require reports, to make regulations for feeding, etc., was sustained.

The Court, by Mr. Chief Justice Taft, said, at page 521:

> "Whatever amounts to more or less
> 456 constant practice, and threatens to obstruct or unduly to burden the freedom of interstate commerce is within the regulatory power of Congress under the commerce clause, and it is primarily for Congress to consider and decide the fact of the danger and meet it."

In Northern Securities Co. *v.* United States, 193 U. S. 197, it was held that the Sherman Act, in prohibiting the acquisition by a holding company of the stock of two competing interstate railroads, was constitutional, and rejected the contention that Congress could not forbid indi-

viduals from disposing of their corporate stock or other property.

In Bedford Co. *v.* Stone Cutters Assn., 274 U. S. 37, a combination on the part of members of a national labor union, to refuse to install stone quarried by non-union shops in Indiana, was held to be a conspiracy in restraint of interstate commerce, and Mr. Justice Sutherland, at pages 46 and 47, said:

> "That the means adopted to bring about the contemplated restraint of commerce operated after physical transportation had ended is immaterial. (Citing cases.) The product against which the strikes were directed, it is true, had come to rest in the respective localities to which it had been shipped, so that it had ceased to be a subject of interstate commerce, • • • In other words, strikes against the local use of the product were simply the means adopted to effect the unlawful restraint." 458

459

In Chicago Board of Trade *v.* Olsen, 262 U. S. 1, the Grain Futures Act under which Congress undertook to regulate futures contracts on grain exchanges was held constitutional, notwithstanding the fact that the making of grain futures contracts were local, and it appeared that most of such contracts were settled by offsetting contracts rather than by actual delivery of grain. At page 40, the Court, by Mr. Chief Justice Taft, said:

> "Sales of an article which affect the country-wide price of the article directly affect the country-wide commerce in it.

460

> By reason and authority, therefore, in determining the validity of this Act, we are prevented from questioning the conclusion of Congress that manipulation of the market for futures on the Chicago Board of Trade may, and from time to time does, directly burden and obstruct commerce between the States in grain, and that it recurs and is a constantly possible danger. For this reason, Congress has the power to provide the appropriate means adopted in this act by which this abuse may be restrained and avoided."

461

In United States *v.* Patten, 226 U. S. 525, an indictment under the Sherman Act, charging defendants with a conspiracy to corner the cotton market by purchasing all available cotton futures contracts, was upheld.

In Lemke *v.* Farmers Grain Co., 258 U. S. 50, a North Dakota statute requiring grain buyers to obtain state licenses and to submit to a system of grading and inspection, was held to be an unconstitutional encroachment upon the federal commerce power, because most of the grain so purchased by local buyers was regularly shipped into other states.

462

In Thornton *v.* United States, 271 U. S. 414, the Animal Industry Act, which provided for quarantining and disinfecting cattle in the various states, for the purpose of preventing the spread of animal diseases from one state to another, was upheld.

In United States *v.* Ferger, 250 U. S. 199, an Act of Congress making it a federal offense to issue forged or fictitious interstate bills of lad-

ing was upheld, and at page 203, the Court, by Mr. Chief Justice White, said:

> "Thus both in the pleadings and in the contention as summarized by the Court below it is insisted that as there was and could be no commerce in a fraudulent and fictitious bill of lading, therefore the power of Congress to regulate commerce could not embrace such pretended bill. But this mistakenly assumes that the power of Congress is to be necessarily tested by 464
> the intrinsic existence of commerce in the particular subject dealt with, instead of by the relation of that subject to commerce and its effect upon it. We say mistakenly assumes, because we think it clear that if the proposition were sustained it would destroy the power of Congress to regulate, as obviously that power, if it is to exist, must include the authority to deal with obstructions to interstate commerce (In re Debs, 158 U. S. 564), and with a host of other acts which, because 465
> of their relation to and influence upon interstate commerce, come within the power of congress to regulate, although they are not interstate commerce in and of themselves."

In Railroad Commission of Wisconsin *v.* Chicago B. & Q. Railroad Co., supra, Congress upheld an order of the Interstate Commerce Commission directing railroads in Wisconsin to increase their interstate rates, in order that the railroads would receive a reasonable return

from their intrastate traffic, in conformity with the purposes of the Transportation Act of 1920.

In Colorado *v.* United States, supra, an order of the Interstate Commerce Commission requiring a railroad to abandon a part of its intrastate railroad lying wholly within one state, over the objection of the state, was sustained.

See also Transit Commission *v.* United States, 289 U. S. 121.

In Minnesota Rate Cases, supra, the scope of the interstate power of Congress is described.

467 In Northern Securities Co. *v.* United States, 193 U. S. 197, 337, the Congressional policy behind the Sherman Act is described, and the action of Congress sustained.

In Hammer *v.* Dagenhart, 247 U. S. 251, the Child Labor Law was held unconstitutional, but there was no showing in that case that the practice sought to be regulated had any effect upon interstate commerce.

Whether Congress may or may not have chosen the best method of dealing with the problems within its province is not a subject for con-

468 sideration by this Court, it is sufficient if the method be reasonable and not palpably arbitrary or capricious.

If Acts of Congress have a reasonable relation to proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied. Nebbia *v.* New York, 291 U. S. 502, 537.

The Recovery Act in dealing with transactions affecting interstate commerce, of course deals with violations which substantially affect interstate commerce, and not with violations which

are merely incidental, and as so construed is constitutional.

The allegations of the indictment in the case at bar show substantial violations, not merely incidental violations, which affect interstate commerce, in poultry, an article of food, by those who dealt in no small way, but in thousands of pounds thereof.

Defendants urge that the Act does not provide for punishment for violation of the Act itself, but of the codes approved by the President, 470 and therefore the indictment does not adequately charge the violation of any federal statutes.

This it seems to me is too narrow a view to take, because by the Recovery Act Congress made disobedience of such a code a misdemeanor, and imposed a penalty; therefore to commit such a misdemeanor is to violate the Recovery Act, which is a federal statute.

As to the various grounds stated in the demurrer on which it is contended that the indictment is defective, it will be better to consider the counts generally with reference to all of 471 such grounds.

The first count is for conspiracy. The object to be accomplished is stated, and that object is the commission of certain described acts, which are made misdemeanors by the Recovery Act, and are therefore offenses against the United States. The plan or scheme is alleged, and there is also alleged the business relations of the defendants, which formed the means for accomplishing the object, and finally the agreement or understanding.

There are also alleged a large number of overt acts.

472 *Decision*

The charge of conspiracy cannot be aided by the statement of the overt acts, nor is there any necessity therefor in this case, as the charge is sufficiently made in this case.

In an indictment for conspiracy, the rules of criminal pleading do not require the same degree of detail in stating the object of the conspiracy, as if it was one charging the substantive crime. Thornton *v.* United States, 271 U. S. 414, 423; Williamson *v.* United States, 207 U. S. 425, 447.

473 The form of the indictment for conspiracy used in the case at bar is sufficient. Joplin Mercantile Co. *v.* United States, 236 U. S. 531, 534; United States *v.* Seidman, 45 Fed. (2d) 178.

The first count is not duplicitous or otherwise objectionable, because it alleges a conspiracy to commit more than one offense, under different sections of a statute. The conspiracy is a single crime, even though it be to commit a number of offenses. Frohwerk *v.* United States, 249 U. S. 204, 209; Knoell *v.* United States, 239 Fed. 16, 20; Cert. Denied, 246 U. S. 648; United States *v.* Eisenminger, 16 Fed. (2d) 816.

474 A defendant may be charged with conspiracy, in one count, to commit offenses under different statutes. Ford *v.* United States, 273 U. S. 593, 602; Anderson *v.* United States, 273 Fed. 20, 28; Cert. Denied, 257 U. S. 647.

Counts 2 and 3 defendants contend are defective and charge no crime, in that defendants are charged with selling an unfit chicken, and not with selling a chicken unfit for human consumption.

Defendants are in error and must have overlooked paragraph 7 of the indictment. This paragraph was by reference incorporated in

Counts 2 and 3, and provides, "Culls and poultry unfit for human consumption hereinafter will be collectively called unfit poultry or unfit chickens; and other poultry will be called healthy poultry or healthy chickens." Therefore by the words "unfit chickens" there was described a chicken unfit for human consumption. 475

Defendants contend that Counts 4 to 23, inclusive, are defective and charge no crime, in that it is alleged that chickens were sold or purchased without having the same inspected or approved in accordance with any rule, regulation, or ordinance of the City of New York. 476

There is no allegation in the indictment that there is such a rule, regulation, or ordinance.

This objection is good unless this Court will take judicial notice of the ordinances of the City of New York.

Of course, this Court will take judicial notice of regulations of Federal Departments, and of the laws and judicial decisions of the several states of the Union. Martin *v.* Baltimore & Ohio Railroad, 151 U. S. 673; Lamar *v.* Micou, 114 U. S. 218, 223; Hanley *v.* Donoghue, 116 U. S. 1, 6; Kaye *v.* May, 296 Fed. 450, 453. 477

The Greater New York Charter is a statute of the State of New York, and section 1172 of that Charter provided that the New York Sanitary Code shall be a part of the New York City Ordinances, and the New York Sanitary Code, requires inspection of all poultry brought into the City of New York.

The New York State Courts take judicial notice of an ordinance enacted pursuant to a statute which provides for it, and the Court through its notice of the statute, will judicially

478 notice that which the statute contemplates. Beman *v.* Tignot, 5 Sand. 153; Schrumpf *v.* People, 14 Hun 10, 12.

An amendment to the Greater New York Charter, enacted as a State Law May 5, 1917, removed any doubt there might be as to whether State Courts should take judicial notice of City Ordinances. It provides:

> "All courts in the City shall take judicial notice of City Ordinances."

479 The State Courts have held, under this provision, that the New York Supreme Court, the highest court of original jurisdiction in the State, sitting in New York City, will take judicial notice of City Ordinances. Greenberg *v.* Schlanger, 229 N. Y. 120, 122; Wirth *v.* Burns, 229 N. Y. 148, 150; People *v.* Waldron, 170 N. Y. Supp. 773, 776; Cohen *v.* A. Goodman & Sons, 178 N. Y. Supp. 528, 530.

That objection is not sustained.

With reference to Counts 24 to 36, defendants
480 contend that they are defective and charge no crimes, in that said counts charge a violation of Article 7, Section 14 (Violation of Straight Killing), and that it is not stated in the indictment that the selections were not made for the purpose of determining whether or not said chickens were culls or diseased; and that the indictment is further defective in that said Article and Section do not make it a crime to reject individually healthy chickens. That the requirements of Straight Killing are unreasonable, and that a merchant cannot force a purchaser to buy chickens of the seller's choice.

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A violation of the Article and Section is made a misdemeanor by the Recovery Act. The allegations are that the chickens selected were sold, and certainly that negatives the selection for the purposes of determining whether they were culls or diseased, and the allegation as to rejection shows that the sale was made in other than straight killing.

In view of the allegations as to the effect on interstate commerce, of other than straight killing, I cannot, as a matter of law, determine the requirements of straight killing to be unreasonable. In passing, let me say that the code does not deal with the purchaser but with the seller.

482

Assuming as I must on this demurrer the truth of the allegations, the objection is not sustained.

Counts 34 to 37, inclusive, sufficiently allege Anti Racketeering under subdivision 1 of Section 21, Article 7. They allege what was done by defendants, the name of the person to whom the acts were directed, the place where, and the date when.

483

The defendants are in error. The Article is not limited to acts done to members, but to acts done by members of the industry, and their objection is not sustained.

As to Count 38, the indictment does state in what respects the reports were false, and certainly does state that they related to the sale of poultry. Article 8, Section 3, does call for the making of the report. The making of a false report is not a compliance with the requirement, but a violation of a provision of the code, under Section 3 of the Recovery Act.

The objection is not sustained.

The objection to Count 39 is without merit, as paragraph 8 of the indictment, which is incor-

porated by reference, alleges that the defendants, during a time much longer, but during the time in question, have been engaged in maintaining, operating and conducting, on their own behalf, and on behalf of each other, wholesale slaughter house business at 991 Rockaway Avenue, Brooklyn, New York, and at 858 East 52nd Street, Brooklyn, N. Y.

The failure to make a report was a violation of the code provision.

485 The objection is not sustained.

The objection to Count 40 is sustained.

There is no allegation in that count that any employees of the defendants worked during legal holidays or Jewish holidays, or on emergency maintenance or repair work during the period alleged in the indictment, and the only report required by Article 4, Section 3, is of employees who worked during legal holidays or Jewish holidays, or on emergency, maintenance, or repair work.

The objection to Counts 41 to 50, inclusive, that there is no allegation that the payment of less than 50¢ an hour was in any pay period is met by the allegations that the pay of less than 50¢ an hour to the person mentioned was for each hour worked by the employee.

The allegation that the person was employed by them in the wholesale slaughter house operated by them, is sufficient to show he was engaged in the industry. The objection is not sustained.

The objection to Counts 51 to 59 inclusive, that they do not charge a crime, in that they do not charge that the employee was engaged in the industry, is met by the allegation that the person was employed by them in the wholesale slaughter

house operated by them, which is sufficient to show that he was engaged in the industry. The objection is not sustained.

The objection to Count 60, which has to do with a sale of live poultry to a person not licensed, is not sustained. This is a violation of the code, and that is all we are concerned with. By that count there is no attempt made to punish any one for a failure to obey State laws or Municipal Ordinances requiring him to obtain a license.

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The license required is alleged to be that required by the Ordinances of the City of New York, and by the rules and regulations of the Board of Health of the City of New York, of which we will, for the reasons hereinbefore assigned, take judicial notice.

The defendants did not, in their brief, specifically refer to what are called Counts 6 to 23, both inclusive, but the demurrer generally covers them.

The numbering of the Counts 6 to 23, inclusive, and then without separate allegations but in one paragraph only, charging eighteen separate sales without inspection, not allocating any particular sale to any particular count, is in effect to charge eighteen separate distinct offenses in one count. No one can tell which one of the sales is charged under any particular count, and the defendants are put in the position where they cannot defend as to any particular offense, under any one count, but must defend as to eighteen separate defenses. If duplicity was sought to be avoided by simply enumerating the numbers of the so-called counts, while alleging all offenses together, then that

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490 object was not accomplished, as the manner in which it is alleged is duplicitous.

Each count of an indictment must in and of itself charge a crime, and you cannot charge eighteen crimes in one count by simply giving that count eighteen numbers. Any such method of pleading is too vague and general to be pleaded as res judicata or former jeopardy.

This error is not one merely of form and therefore to be ignored, under Revised Statutes 1025 (18 U. S. C. 556), but is an error which greatly
491 prejudices the defendants.

It is to be noted that a separate and distinct offense, arising out of the same circumstances which form the basis of the so-called Counts 6 to 23, both inclusive, is properly pleaded in the Fifth Count.

Except as to that portion of the indictment denominated as Sixth Count to Twenty-third Count, both inclusive, making eighteen in all, and the Fortieth Count, the indictment is not defective on any of the grounds specified in paragraphs, 2, 5, 6, 9, 10, 11, 13 and 18 of the de-
492 murrer.

The demurrer is sustained as to that portion of the indictment denominated as Sixth Count to Twenty-third Count, both inclusive, being eighteen counts in all, and to the Fortieth Count, for the reasons hereinbefore assigned, and the demurrer is in all other respects, and as to all other counts, overruled.

Settle order on one day's notice.

U. S. D. J.

493

Notice of Motion for Bill of Particulars

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

against

JOSEPH SCHECHTER, *et al.*

494

SIRS:

PLEASE TAKE NOTICE that upon the annexed affidavits of Martin Schechter and Joseph Heller, both duly verified the 29th day of August, 1934, and upon all the records and proceedings heretofore had herein, a motion will be made by the undersigned at the United States District Court, in and for the Eastern District of New York, at the Courthouse, Postoffice Building, Washington Street, Brooklyn, New York, at a Stated Term for motions, in Room 312, on the 4th day of September, 1934, at 10:30 A. M. in the forenoon of that day or as soon thereafter as counsel can be heard, for an order directing that the United States of America furnish a Bill of Particulars to the defendants herein, of the items specified in the affidavit in support of this motion for a Bill of Particulars, which is material and necessary to the defendants, and for such other and

495

496 *Notice of Motion for Bill of Particulars*

further relief as to this Court may seem just and proper in the premises.

Dated, New York, August 29th, 1934.

Yours, Etc.,

JOSEPH HELLER,
Attorney for Defendants,
O. & P. O. Address,
51 Chambers Street,
Borough of Manhattan,
497 City of New York.

To:

LEO J. HICKEY, Esq.,
United States Attorney,
For the Eastern District of New York,
Brooklyn, New York.

498

Affidavit of Martin Schechter in Support of Motion for Bill of Particulars

499

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

against

JOSEPH SCHECHTER, *et al.*

500

State of New York,
County of New York, } ss.:

MARTIN SCHECHTER, being duly sworn, deposes and says:

That he makes this affidavit in support of the motion for a Bill of Particulars.

That he makes this affidavit on behalf of the defendants herein as though the application is made by each of the defendants separately. The reason for making this application for all of the defendants is to avoid the multiplicity of motions.

501

It is absolutely necessary to procure a Bill of Particulars in order to help prepare the defendants' defense to the indictment herein, and to avoid surprise on the day of trial. The defendants desire to be more particularly informed as to matters which will aid them in their defense. The application is made in good faith, is necessary and indispensable.

502 *Affidavit of Martin Schechter*

The following particulars are necessary:

1. Let the government state as to what it claims is the percentage of live poultry consumed in the Metropolitan area of New York State as described in the indictment out of the total amount of live poultry consumed in the United States.

2. Let the Government state what is the approximate total amount of poultry consumed by all of the States indicating
503 what percentage of the total output each state of the Union consumes.

3. Let the Government state specifically what were and are the uneconomic and destructive practices of the live poultry industry of the Metropolitan area, what the Code seeks to eliminate.

4. Let the Government state what it means by its claim that there was a widespread competitive marketing and industrial evils of the live poultry industry
504 making the adoption of the Code necessary.

5. Let the Government state in what way these evils demoralized the entire price structure in the live poultry industry of the Metropolitan area and other poultry markets throughout the United States.

6. Let the Government enumerate what are the other poultry markets throughout the United States and where are they located.

7. Let the Government indicate in what way the practices in the Metropolitan area impeded, diverted and harmfully affected the interstate commerce of live poultry.

8. Let the Government state when the alleged evils above described commenced and when they ceased.

9. Let the Government give comparative percentages showing in what way the interstate commerce was affected by the alleged evils, during the period of its existence. 506

10. Let the Government state in what particular places in the Eastern District of New York did the defendants feloniously, unlawfully and wilfully conspire to commit the offenses against the United States, stating the time and place, and who of the defendants were present when the conspiracy and confederation to commit the offense against the United States, took place. 507

11. State in what way the conspiracy charged against the defendants encouraged and caused other violations of essential provisions of the Code in a large number of other members of the live poultry industry.

12. State who the members of the other industries are who were encouraged in violating the provisions of the Code and state in what way the other members violated the Code.

508 *Affidavit of Martin Schechter*

13. State how such encouragement diverted interstate shipments of live poultry and how and in what manner disrupted the normal flow of interstate commerce coming into the State of New York.

14. Let the Government state as to the manner in which the chickens sold to Harry Stauber or another as set forth in Counts 2 and 3, were unfit, describing the nature of the disease or the manner in
509 which it is claimed they were unfit, and stating how the defendants named in Counts 2 and 3, derived knowledge that the chickens sold to the individual mentioned in Counts 2 and 3, knew that the chickens so sold were unfit, and whether a sale actually took place.

15. State what price was charged per pound for the sale of the chickens described in Counts 2 and 3, to Harry Stauber and another.

510 16. State in what way the sale of said chickens to Harry Stauber and another, described in Counts 2 and 3, affected interstate commerce of poultry, and in what way the sale of said chickens encouraged and caused the sale for human consumption of unfit poultry by other slaughter house men; in what way the sale of other chickens described in Count 2, affected the market price of other poultry; in what way the sale of the chickens described in Counts 2 and 3, demoralized the market value of other chickens.

17. State whether the chickens transported in the manner described in Count 4, are claimed to be diseased chickens, or healthy chickens.

18. State in what way the purchase of said chickens as described in Count 4, affected interstate commerce.

19. State in what way uninspected poultry, if healthy, causes an increase in the transportation of unfit poultry into New York from other States. 512

20. State to whom it is alleged the poultry was sold as described in Count 5, giving the names and addresses, dates and the amount of poultry purchased by each individual as described in Count 5 of the indictment.

21. State in what way the sale of the said poultry as described in Count 5, affected interstate commerce; in what way the sale of healthy poultry although uninspected affects interstate commerce; in what way the same helps to create frauds; in what way the sale of the poultry described in Count 5, caused a misrepresentation of the true weight of the said poultry; in what way the said sale of said poultry described in Count 5, causes an increase in transportation of unfit poultry and a decrease of healthy chickens in the State of New York, from other States. 513

22. Let the Government show with reference to Counts 24-33 inclusive, in what way a participation of selection of

chickens as described in said Counts, affected interstate commerce and in what way the acts of the defendants, or either of them, in selling selected chickens, affected the grading of poultry after the same had already been at the place of the defendants' business; in what way said acts caused competitive practice; in what way said acts demoralized the price structure; in what way the sale of said selected chickens affected the price for the sale of
515 other chickens contained in the coops from which the alleged chickens were selected and sold; in what way the selection of the chickens described in said counts caused shippers within the State of New York to sell and ship ungraded poultry, and in what way the sale of said chickens as described in said counts caused the prices to be diminished in so far as the shippers of the said poultry were entitled to the same.

516 23. Let the Government state with reference to Counts 34-37 the following:

State the exact language used by the defendants or either of them which the Government claims constitutes threatening, coercive and intimidating language.

State exactly what gestures were used by the defendants or either of them as described in said last counts.

State in what way said acts of the defendant or either of them affected interstate commerce in the live poultry industry, and in what way said acts caused competitive marketing and industrial

evils, and in what way the said acts obstructed the free flow of interstate commerce into the State of New York, and in what way said acts diminished the volume and value thereof, and disrupted the ordinary flow thereof.

24. Let the Government state with reference to Count 38, in what way the reports filed were false, fictitious, and in what way the acts of the defendants affected interstate commerce, and in what 518
way said acts diminished volume and value thereof, and disrupted the ordinary flow thereof.

25. Let the Government state with reference to Counts 38-39, inclusive, what were the acts of the defendants or either of them that caused competitive marketing and industrial evils, and in what way the said acts obstructed the free flow of interstate commerce into the State of New York, and in what way said acts 519
diminished the volume and value thereof, and disrupted the ordinary flow thereof.

26. With reference to Counts 41-59, inclusive, let the Government state the name of the person it is alleged received illegal wages and worked excessive hours; exactly what work and the nature of employment said employee or employees performed; the exact amount of hours worked each day and each week; the exact amount of wages received per day, hour and week; in what way the defendants by the acts alleged to have been committed in the

520 above counts enabled them to obtain unfair advantages over all other slaughter houses, thereby encouraging and causing other slaughterhouse men to engage in the same and all other practices prohibited by said Code; stating who such slaughterhouse men are, giving their names and addresses.

27. A—State the exact violations or acts committed by other slaughter house
521 men as a result of the defendants' encouragement, and in what way the defendants by their acts as described by the Government in Count 60, caused a disruption in the cause of flow of interstate commerce.

27. B—In what way the said acts caused a decrease in the interstate transportation of poultry.

WHEREFORE, it is prayed that the motion herein for a Bill of Particulars, be granted.

522

MARTIN SCHECHTER.

Sworn to before me this 29th day of August, 1934.

JOSEPH HELLER
Notary Public.

523

Affidavit of Joseph Heller in Support of Motion for Bill of Particulars

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

against

JOSEPH SCHECHTER, *et al.*

524

State of New York,
County of New York, } ss.:

JOSEPH HELLER, being duly sworn, deposes and says:

That he is the attorney for the above-named defendants. That he makes this affidavit in support of the motion for a Bill of Particulars.

The defendants pleaded "Not Guilty" on their indictment on August 1st, 1934. A demurrer was filed on August 11th, 1934. Thereafter, on August 16th, 1934, a demurrer was argued, brief was submitted, and a supplemental brief was submitted on August 18th, 1934. A decision on the demurrer was rendered on August 29th, 1934, as reported in the Law Journal.

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Aside from the fact that your deponent was engaged day and night in the preparation of the brief and supplemental brief, no motion for a Bill of Particulars could have been made from August 18th, 1934 till the making of this application this day, for the reason that the defendants

526 *Affidavit of Joseph Heller*

had no standing by way of demanding a Bill of Particulars on matters which they claim they should not be called upon to plead. It was unknown up to this time as to whether or not the demurrer to some of the Counts would be sustained or not. As a matter of fact, the demurrer was sustained to 19 of the 60 Counts. Upon receiving the decision of the Court, your deponent immediately prepared his motion for a Bill of Particulars, and respectfully prays that the motion be granted.

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JOSEPH HELLER.

Sworn to before me this 29th day of August, 1934.

MEYER KRASNER
Notary Public.

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Order Denying Motion for Bill of Particulars

At a Stated Term of the United States District Court held in and for the Eastern District of New York, at the Federal Building, Borough of Brooklyn, City, State and Eastern District of New York, on the 14th day of September, 1934.

Present—Hon.
United States District Judge.

530

UNITED STATES OF AMERICA,
Plaintiff,
against
JOSEPH SCHECHTER, *et al.*
Defendants.
} Cr. 36041

A motion having been filed by the above-named defendants for a Bill of Particulars and the same having come on to be heard before me, and after hearing Joseph Heller, Esq., in support of said motion, and Leo J. Hickey, Esq., United States Attorney, for the Eastern District of New York, by Walter L. Rice (Special Assistant to the Attorney General), of counsel, in opposition thereto, and after reading and filing all of the papers, and after due deliberation, it is

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ORDERED, motion denied except that the Government should be required to state which Counts of the indictment will be the subject of proof upon the trial.

MORTIMER W. BYERS,
United States District Judge.

532

Bill of Exceptions

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,
Plaintiff,

v.

533 JOSEPH SCHECHTER, MARTIN SCHECHTER, ALEX SCHECHTER, AARON SCHECHTER, A. L. A. SCHECHTER POULTRY CORPORATION and SCHECHTER LIVE POULTRY MARKET, INC.,
Defendants.

Before—Hon. MARCUS B. CAMPBELL, U. S. D. J., and a jury.

Brooklyn, N. Y., October 17, 1934.

534 APPEARANCES:

WALTER L. RICE, Esq., Special Assistant to the Attorney General.

Hon. LEO J. HICKEY, United States Attorney, Eastern District of New York.

H. STEWART McDONALD, JR., Esq., Special Attorney, Agricultural Adjustment Administration.

JOSEPH HELLER, Esq., Attorney for the Defendants.

(A jury was duly empaneled, selected and sworn, and two alternate jurors selected and sworn.)

535 The Court: Now proceed, Gentlemen.

Mr. Rice: If your Honor pleases, the Government offers in evidence a certified copy of a certificate of incorporation of the Schechter Live Poultry Market, Inc. I understand that counsel for the defendants would not require authentication of this document.

Mr. Heller: That is correct. We have no objection.

The Court: Without objection, it may be received.

536 (Marked Government's Exhibit 1 in evidence.)

Mr. Rice: The Government now offers in evidence a certified copy of a certificate of incorporation of the A. L. A. Schechter Poultry Corporation.

Mr. Heller: No objection.

The Court: Without objection, it may be received.

(Marked Government's Exhibit 2 in evidence.)

Mr. Rice: I now offer in evidence a copy of certificate of doing business under the trade name of the Rugby Live Poultry Market, operating at No. 858 East 52nd Street, Brooklyn, 537 New York.

Mr. Heller: I do not see its materiality here as yet. I do not deny that it is authentic, but I do not see what materiality that has in this case.

The Court: I do not know.

Mr. Heller: At this time I object to it as being wholly immaterial, irrelevant and incompetent.

Mr. Rice: I will be glad to point out its materiality at this point. The Rugby Live Poultry Market operates at the identical address of the

538 A. L. A. Schechter Poultry Corporation. Those two establishments operate under those two trade names indiscriminately, either the Rugby or the A. L. A. Schechter Poultry Corporation. We propose to show that the evidence as to the Rugby applies to the A. L. A. Schechter Poultry Corporation.

The Court: If he objects to it, I think you had better offer some evidence as to those facts before you offer the certificate.

539 Mr. Rice: Do I understand Mr. Heller wants evidence on that fact?

Mr. Heller: As to what?

Mr. Rice: That the Rugby Live Poultry Market Corporation is the trade name of the A. L. A. Schechter Poultry Corporation, that it operates at the same address and is operated by these defendants.

Mr. Heller: That is correct.

Mr. Rice: You want proof of that?

Mr. Heller: Yes.

Mr. Rice: Very well.

540 The Court: That is withdrawn then temporarily?

Mr. Rice: May I have this marked for identification?

The Court: Mark it for identification, surely.

(Marked Government's Exhibit 3 for Identification.)

Mr. Rice: I offer in evidence a certified copy of the certificate of incorporation of Mogen David Live Poultry Market, Inc.

Mr. Heller: There is no objection to that except subject to connection. I haven't any objection to the document, but I still do not know what the purpose is, but the document itself I have no objection to.

The Court: Is that true of the first one also?

Mr. Heller: No, the Rugby I have no knowledge of. 541

The Court: I just want to get it straight; this last one you have no objection to?

Mr. Heller: This last one I have no objection to, subject to connection.

The Court: Very well; it may be marked.

(Marked Government's Exhibit 4 in evidence.)

Mr. Rice: I offer in evidence a card, which is a copy of the authorized signatures of the A. L. A. Schechter Poultry Corporation account 542 maintained in the Manufacturers Trust Company. The card indicates that Alex Schechter, as president, and Louis Schechter, as secretary are authorized to sign checks for the A. L. A. Schechter Poultry Corporation.

Mr. Heller: I will concede those are the facts, but I do not know why it is material to offer this now. When the time comes I will have no objection, if it is material. I will concede those facts, but I do not know why it is material at this time.

Mr. Rice: I offer the card in evidence. 543

The Court: There isn't anything to show, unless it is for the purpose of identification of some signature.

Mr. Heller: I will have no objection that these two are the officers authorized to sign.

The Court: I will take——

Mr. Heller: Subject to connection at the proper time.

The Court: If you do not subject to it as a fact, I will take it because it may relate to something else.

Mr. Heller: That is all right.

(Marked Government's Exhibit 5 in evidence.)

544 *Leland D. Ives—By Govt.—Direct*

Mr. Rice: I now offer in evidence a certification by the officers of the A. L. A. Schechter Poultry Corporation to the effect that the president and secretary of the A. L. A. Schechter Poultry Corporation are authorized to act on behalf of that corporation—sign checks and so forth.

Mr. Heller: I have no objection to the document being offered in evidence for whatever purpose the Government wants it; for whatever is in there. I do not want, however, to limit it to
545 any particular purpose.

The Court: I will take it because these are the defendants and it shows who represents them. It can be marked.

(Marked Government's Exhibit 6 in evidence.)

Mr. Rice: Now if your Honor pleases our first witness is Dr. L. D. Ives.

The Court: Very well, call your witness.

LELAND D. IVES, called as a witness on behalf of the Government, having been first duly
546 sworn, testified as follows:

Direct examination by Mr. Rice:

Q. Dr. Ives, what is your occupation? A. I represent the Bureau of Agriculture Economics of the United States Department of Agriculture in the inspection of live and dressed poultry in the metropolitan area and the eastern States.

Q. And what is the particular position that you occupy today? A. I am senior marketing specialist by designation, but supervisor of the Live Poultry Inspection Service.

Q. Now will you explain what the Live Poultry Inspection Service is? A. The Live Poultry In-

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spection Service is an Inspection Service inaugurated at the request of the poultry industry in New York because of a regulation of the Health Department that all poultry coming into New York City for sale must be inspected.

Mr. Heller: I object, your Honor, to so much of the answer which says, "because of a regulation," and so forth.

The Court: Yes.

Mr. Heller: I move that that part of the answer be stricken out.

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The Court: Strike it out.

Q. When was the Joint Inspection Service inaugurated? A. November 15, 1926.

Q. And under what Act of Congress was it inaugurated? A. Under the Act of May, 1926.

Q. Have you been operating as supervisor of the Joint Inspection Service since that Service came into existence in 1926? A. Yes, since its inception.

Q. And you have had a staff under you since that time? A. Yes, sir.

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Q. What is your staff? A. At present there are 13 members on the live poultry and seven on the dressed poultry consisting of eleven veterinarians and nine laymen.

Q. What training do your members have before they are permitted to inspect poultry?

Mr. Heller: That is objected to.

The Court: Overruled.

Mr. Heller: Exception.

A. The veterinarians of course must be graduates of accredited recognized colleges granting a degree of veterinary in medicine, but the lay-

550 men who operate under the supervision of the veterinarians must have sufficient practical experience in taking the crop weight or judging the crop weight of poultry and distinguishing the different diseases of poultry to receive a license from the Secretary of Agriculture after my recommendation that they are suitable.

Q. Are all of your inspectors of live poultry licensed in this manner? A. They are.

Q. Before they obtain their license what sort of training are the inspectors subjected to?

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Mr. Heller: That is objected to unless they received their training under this witness.

Q. Do they receive their training under you, Dr. Ives? A. Yes, sir.

Q. Will you describe that training? A. For the crop weights that they are supposed to judge in examining poultry, they receive that by actual experience of taking individual chickens, and each one in turn judging the weight by feeling of the size of the crop.

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Q. Will you explain what a crop is? A. A crop is simply dilatation of the esophagus that holds the food temporarily until it is through into the gizzard for digestion or into the stomach.

Q. Do you know of any more common term for the word crop, any layman's term? A. Crop is a layman's term.

Q. Isn't it called the craw? A. Sometimes, yes, it is called the craw too.

Q. You were explaining the training received by your inspectors prior to the time that they are licensed. Will you explain just what that training is? A. As I say, the training is to judge the size of each crop by feeling of them,

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and after—they all go through the same system of judging—and after these crops are judged by the different inspectors at different days, those same birds are killed, they are identified, each one of those crops taken out and actually weighed on scales to see whether they correspond with the judgment of the inspectors by feeling or palpation, in other words. Now, if they come close enough to the actual weight when they judge it, why, we recommend that they get a license but until they do come accurately to the actual weights, why, we don't give them a license.

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Q. What training do they have designed to teach them to ascertain poultry diseases?

Mr. Heller: I object to the form of the question.

Mr. Heller: I object to that question as to form, and it calls for a conclusion. Let the witness state——

Mr. Rice: All right, all right, I will withdraw the question.

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Q. Dr. Ives, do your men have any training prior to receiving a license on the subject of poultry diseases? A. Well, of course, the veterinarians all get their training in colleges. Laymen get their instructions under the supervision of the veterinarian assigned purposely to instruct them in that line.

Q. What is the character of that training? A. The character of that—they take them to the terminals where the actual sick birds come in, or the cars come in, and the birds are picked out by the veterinarians and brought to the laboratory which we had for the first three years of our existence, and they were brought there

556 and kept in cages and we watched developments. They were also taught by our specialist that we had for the first three years, for that purpose.

The Court: Are you a veterinarian?
The Witness: Yes, sir.

Q. What was your training, your personal training? A. Well, my personal training in meat inspection was in the Bureau of Animal Industry.

557 Q. Which is a bureau of what department? A. Of the United States Department of Agriculture. For twenty years I was with them on meat inspection, and in 1926 I was transferred to the Bureau of Agricultural Economics, to take charge of the inspection of poultry, which had just started, and I received my principal education in poultry at the time we started with our poultry specialist, whom we had for that purpose.

Q. Will you describe your system of inspecting the freight poultry that comes into New York? A. Well, on arrival at the yards in the morning——

558 Q. What yards do you mean? A. The freight yards, where the poultry arrives in cars.

Q. Will you describe what those freight yards are, where they are, and what they are called? A. Well, they are called the Live Poultry Terminal at 60th Street and Eleventh Avenue in New York City, which is the largest one.

Q. That is the New York Central Terminal? A. That is the New York Central Terminal.

Q. That is on Manhattan? A. Manhattan Island.

Q. At 60th Street? A. Yes, sir.

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Q. Are there also terminals in New Jersey? A. There is the Lackawanna Terminal at Hoboken and the Erie at Weehawken, and the Pennsylvania at Jersey City, and the Central Railroad of New Jersey at Communipaw.

Q. How about the Baltimore & Ohio? A. Well, the Baltimore & Ohio and the New Jersey Central is the same location.

Q. The poultry arrives at those five terminals that you have mentioned? A. Yes, sir.

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Q. Now will you explain your system of inspecting the freight poultry that arrives at those terminals? A. When the inspectors arrive at eight o'clock in the morning they must receive an application for the inspection of a car by the applicant; it is a written application——

Q. Who are the applicants? A. The commission merchants of New York City, or Greater New York.

Q. The poultry commission merchants? A. The poultry commission merchants are the applicants.

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Q. You say they make an application for inspection of a particular carload of poultry? A. They must make a written application to us for inspection.

The Court: They are the consignees, are they?

The Witness: Yes, sir.

Q. They receive the poultry from whom? A. From the shipper of live poultry in the West.

Q. All right. Now, what happens after the commission man makes his application for inspection of a particular carload of poultry? A. The inspector receives an application and if it is made out in proper form, why, he proceeds

to the car, the number of which is on this application, and there he inquires from the car man in attendance the point of origin, the different classes of poultry which he has in his car, the date he left there, what he fed them en route, how many he lost en route, and several other questions, simply for information as to the point of origin and quality of the poultry.

Q. And what does the inspector do with that information? A. That information is all entered on the certificate, an official certificate which is
563 written at the termination or conclusion of each inspection; this official certificate is written showing the character of the poultry at this particular time.

Q. And is it part of the inspector's duty to make out this certificate? A. He is required by our regulations to make out a certificate on each inspection.

Q. And what do they do with the certificate? A. It is made in duplicate by the inspector at the railroad yards. The original is given to the applicant or the commission merchant, and a
564 copy is sent to the office, from which four other copies are typed and sent; one each to the receiver—that would be the shipper, and the Board of Health.

Q. The New York City Board of Health? A. Yes, the New York City Board of Health, and one to our Washington office, and one on file in our own office.

Q. By the Washington office do you mean the office of the Bureau of Agricultural Economics of the Department of Agriculture? A. Correct.

Q. Now, are you required to keep these records that you have spoken of? A. Yes, sir.

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Q. And that is regularly done in the course of your functions? A. We have a copy of every certificate that was ever written.

Q. Does your office compile statistics on the total number of cars of live poultry coming into New York by freight? A. Yes, sir.

Q. And those records are kept in the manner that you have described? A. Yes, sir.

Q. Now will you describe the inspection service as it relates to the express poultry and truck poultry? A. Express poultry—we have a very limited amount arriving here. That is, we get very requests for inspection. We do inspect regularly at Communipaw, express poultry that arrives by the Railway Express Agency and that is delivered to any consignee in the West Washington market, that is inspected at the time of delivery. The truck poultry, poultry brought in by trucks, as a rule that is received in the West Washington Market or the Wallabout Market in Brooklyn. We have a few other minor points where we inspect, but those are the two principal one.

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Q. Will you name all of the points where you regularly inspect truck poultry? You have named the Wallabout Market. A. The Wallabout Market in Brooklyn, and the Lackawanna Terminal at 25th Street and the East River, I guess it is, or the Bay, in Brooklyn are the only two places designated. In Manhattan there is West Washington Market and the railroad terminals of the New York Central Railroad at 60th Street. In the Bronx we have East 149th Street, the Bronx Terminal, we have the Harlem Terminal at 135th Street and Park Avenue. I do not recall if there

568 are any more, but in Jersey, of course, we have all the railroad terminals in Jersey City.

Q. All of the railroad terminals that you have mentioned? A. Yes, sir.

Q. How long does it take for you to furnish an inspector after a request has been made to inspect poultry at a particular place other than a railroad terminal? A. As a rule the requests for inspection of truck poultry come in about eleven o'clock, and we give them an inspection around twelve or one, that is about as early as
569 we can do it on account of the principal amount of inspection being made at the railroad terminals, and our regulations require that those that apply first must be served first.

Q. Suppose a request for an inspection comes in at three o'clock in the afternoon, after your inspectors have finished inspecting at the railroad terminals, then about how long does it take you to supply an inspector for truck poultry? A. The first one would probably be three-quarters of an hour, but, if there were more after that, there wouldn't be any time, because we would
570 have an inspector there waiting for the others.

Q. Do you maintain inspectors at the railroad terminals throughout the business part of the day? A. Yes, sir.

Mr. Rice: May I ask that this paper be marked for identification?

(Marked Government's Exhibit 7 for Identification.)

Q. Dr. Ives, I hand you Exhibit 7 for Identification and ask you whether you can tell us what that document is? A. This is a detailed

report of the number of carloads of live poultry received at New York during the year 1929.

Q. And that refers only to freight poultry coming in? A. Yes.

Q. In the year 1929? A. Yes, sir.

Q. Do you know how those figures are computed? A. These figures are taken from the individual certificates written by the inspectors on the different roads.

Q. As you have already described? A. Yes, sir.

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Q. Now, is Exhibit 7 for Identification a public document? A. Yes, sir.

Q. And is it kept in the regular course of the Government's business? A. Yes.

Q. And do you know whether or not the figures on Exhibit 7 for Identification are correct? A. I would swear that they are correct, yes, sir.

Mr. Rice: I now offer Government's Exhibit 7 for Identification in evidence.

Mr. Heller: If your Honor please, may I ask one question beforehand?

The Court: Yes, go ahead.

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By Mr. Heller:

Q. Is this the original from your records, or is this a copy? A. This is a copy made from the originals.

Q. Did you make it up personally? A. No, sir.

Mr. Heller: Now, if the Court pleases, I object to this going into evidence as not being the best evidence.

The Court: The Government could have a certified copy, they do not have to offer the original, they can have it certified.

Mr. Heller: Is this a certified copy?

Mr. Rice: Is it my understanding that counsel is going to ask us to produce a certified copy of this Government document?

Mr. Heller: Unless I have some assurance of the correctness of this. I do not want to put you to the trouble, unless I have some assurance that this is an exact copy.

575 The Court: Ask him if he has compared it. Did you compare that with the original, is it correct?

The Witness: I personally haven't compared this one, but I am absolutely certain that it is correct.

Q. Dr. Ives, Exhibit 7 for Identification is a mimeographed table? A. Absolutely.

Q. What is it mimeographed from? A. It is mimeographed from the original, that is, copied from our daily reports and checked before it is sent out.

576 Q. When was it mimeographed? A. Mimeographed in January, 1930.

Q. At that time were you supervisor of the Inspection Service? A. Yes, sir.

Q. Was it your duty to check the accuracy of these tables? A. I wouldn't say it was my duty, but we did it.

Q. You did it? A. Yes, sir.

Q. At that time? A. Yes, sir.

Q. And at that time were they correct? A. Absolutely.

Q. Duplications of the original? A. Absolutely.

Q. Now, have mimeographed copies of Exhibit 7 for Identification been sent out to the poultry trade? A. Yes.

Q. About how many would you say have been sent out? A. I think they sent out about eight or nine hundred every—well, daily.

Q. Eight or nine hundred? A. And monthly and yearly. There is a different set of reports made very day and every month and every year —tabulations.

Q. And these mimeographed tables are open to the public? A. Absolutely, that is what they are made for. 578

Mr. Rice: I offer Exhibit 7 for Identification in evidence.

Mr. Heller: I have a question to ask.

By Mr. Heller:

Q. What does this Market News Service, 53 Park Place, represent, is that a Government agency? A. Yes, it is our office.

Q. When you say "our," what do you mean? A. I mean the Bureau of Agricultural Economics. 579

Q. And they have a subdivision known as the Market News Service? A. Yes, sir.

Q. 53 Park Place, Room 902? A. It isn't 53 Park Place any more. It is 614 Washington Street.

Q. I mean, at that time when it was gotten up. A. Yes.

Q. And Government agents are employed to promulgate these papers, is that correct? A. Yes, absolutely.

Mr. Heller: Now, if your Honor pleases, I won't object to it on that ground, but

580 *Leland D. Ives—By Govt.—Direct*

I don't see its materiality and on that ground I do object.

The Court: Well, I will take it and if they do not connect it up I will strike it out.

(Government's Exhibit 7 for Identification received in evidence.)

Mr. Rice: Now I ask that these papers be marked for identification.

(Four papers marked Government's Exhibits 8, 9, 10 and 11 for Identification.)

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By Mr. Rice:

Q. Dr. Ives, I hand you Government's Exhibit 8 for Identification, and I ask you whether or not that is the same table for 1930 as Exhibit 7 is for 1929? A. Yes, sir.

Q. All of these same things are true as of Exhibit 8 for Identification? A. The same system exactly was used, sir.

Q. Now Exhibit 9 for Identification which I now show you, is that the same thing for 1931?

582 A. Yes, sir, it is.

Q. And all of the same facts apply? A. Yes, sir, they do.

Q. Now I show you Government's Exhibit 10 for Identification; is that the same thing for 1932? A. That's right.

Q. And all of the same facts are true? A. The same thing.

Q. I show you Government's Exhibit 11 for Identification; is that he same for 1933? A. Yes, sir, that is right.

Q. And the same facts are true? A. The same facts are true.

Mr. Rice: I now offer Government's Exhibit 8 for Identification in evidence.

Mr. Heller: I make the same objection to all of these, your Honor.

Mr. Rice: I offer Government's Exhibits 8, 9, 10 and 11 for Identification in evidence.

Mr. Heller: I object on the ground that no materiality has been shown as yet.

The Court: You do not object to the form of proof, do you?

Mr. Heller: No, your Honor.

The Court: Well, you only claim it is not material. I will take it and if they are not connected up I will strike them out. 584

(Government's Exhibits 8, 9, 10 and 11 for Identification received in evidence.)

Mr. Rice: I ask that this table be marked for Identification.

(Marked Government's Exhibit 12 for Identification.)

Q. Dr. Ives, will you tell us what Government's Exhibit 12 for Identification is? A. This report here is a tabulation of receipts of freight poultry, express poultry, and truck poultry received during the month of September, 1934, and a summary of the contents, that is the classification of the poultry in these cars and trucks. 585

Q. Is this likewise a Government document? A. Yes, sir.

Q. Prepared in the same way? A. Prepared in the same way as the freight yearly poultry.

Q. And the same facts are true as to this table relating to the first months of 1934 as to the previous tables? A. Yes, sir.

Mr. Rice: I offer this in evidence.

586 The Court: This is for the month of September, isn't it?

The Witness: September, 1934.

Q. And this goes through September, 1934? A. Yes, sir.

The Court: From when?

The Witness: For the month of September, September 1st to 30th.

587 Q. When does it start? A. I thought it was a monthly report.

Q. Look at the tables at the bottom. A. Oh, there is also a summary of all preceding months.

The Court: When is it from, from when to when?

The Witness: Since January 1st. It is an accumulation of poultry.

The Court: From January 1, 1934 to and through September 30th, 1934, is that it?

The Witness: September 30th, 1934, 588 that is it.

The Court: There is no objection to the form of proof, I suppose?

Mr. Heller: Subject to connection.

(Government's Exhibit 12 for Identification received in evidence.)

The Court: You know, if you want to, you could go right along and if they offer them, and they are not allowed, you may mark them for identification and save time. You won't have to mark them both ways.

Mr. Rice: Very well.

The Court: If you want to interrogate and then offer and then, if it is not received, you may mark it for identification. It saves two markings.

Q. Dr. Ives, have you eight tables each one of which is headed, "Receipts of Live Poultry by States at New York," and for a particular year, and by express, as to certain tables and by truck as to other tables. These eight tables are arranged in order, commencing with 1926 and going up through 1933. Now, will you please 590 tell us whether or not those tables were prepared in the same way as the previous tables? A. They are all prepared exactly the same way as the previous tables.

Mr. Rice: I offer these eight tables in evidence.

Mr. Heller: The same objection as before, your Honor.

The Court: Well, now, you don't object to the manner or form of proof, but you say they are not connected? 591

Mr. Heller: That is right.

The Court: Now do you want to make them one exhibit or do you want to make them separate?

Mr. Heller: It doesn't make any difference to me. I understand, your Honor, that if in the future the years on these documents appear to be too remote then I can move to have them stricken out.

The Court: Now as I understand it you do not object to the form of proof, in other words you do not require that they should offer certified copies?

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Mr. Heller: No, I do not, your Honor, but if later on I desire to make a motion to strike out because they are too remote I can do so.

The Court: Oh, yes.

Mr. Rice: If your Honor pleases, there are two more supplemental tables which should be included with the eight. I should like to identify those and offer them as part of the exhibit with the eight tables.

593 The Court: Very well.

Q. What are the two tables which you were just handed, Dr. Ives?

Mr. Heller: They speak for themselves, I do not think he has to go into an explanation.

The Court: Just to get something on the record, that is all.

Mr. Heller: I see.

The Witness: They are tabulations of the receipts from different states by truck
594 of live poultry for 1931 and 1932.

Q. That is, the first table relates to 1931 and the second table to 1932? A. To 1932, exactly.

The Court: You offer them in connection with the other eight, making all ten as one exhibit?

Mr. Rice: Yes, your Honor.

The Court: And there is no objection to the form or manner of proof; you object to them in themselves and reserve the right to move to strike them out if for any reason they are not connected?

Mr. Heller: Yes, your Honor.

595

(Marked Government's Exhibit 13 in evidence.)

The Court: I will have to ask you gentlemen to have somebody representing each of you to watch that none of your witnesses come in. There is no way of my doing it, so if you will just do that, each of you have somebody to watch to see if any of your witnesses come in, tell them to leave.

596

Q. I hand you Government's Exhibit 11, Dr. Ives. Will you tell us how many carloads of live poultry came into New York in the calendar year 1933?

Mr. Heller: I object to that. The document speaks for itself.

The Court: You may read it, if you want to.

Mr. Rice: Very well.

The Court: It is in evidence. You may read it.

597

Mr. Rice: Government's Exhibit 11 shows that the total number of carloads of live poultry coming into New York in 1933 was 8,150 freight carloads and that that poultry arrived from a great number of States—I believe from about 35 States—but none of which is the State of New York.

Q. Dr. Ives, does any freight poultry come from within the State of New York? A. No, sir, none whatsoever.

Q. Not even one carload? A. No.

598 Q. Then it is true that 100 per cent. of the freight poultry consumed in New York City comes from States other than New York? A. Correct.

Q. About how many pounds of poultry are there in each freight car? A. 17 to 18,000.

Mr. Rice: Government's Exhibit 13 indicates that the express poultry coming into New York amounted to a total, in 1933, of 1,814,948 baskets.

599 Q. Is this in baskets, Dr. Ives (handing paper to the witness)? A. I will have to see. This is pounds.

Q. Pounds? A. Pounds.

Mr. Rice: Gentlemen of the jury, this exhibit further indicates that the total amount of truck poultry coming into New York in 1933 was 41,696,293 pounds.

Q. Dr. Ives, in what form does the express poultry come into New York, is that in coops
600 or some other containers? A. Well, they call them baskets. They are little wooden crates that hold about 50 pounds of poultry.

Q. 50 pounds net? A. 50 pounds net.

Q. Now what about truck poultry? A. Well, as a rule that comes in in the same kind of baskets or containers.

Q. Dr. Ives, does your office compute the total number of pounds of diseased and unfit poultry which is destroyed by your inspectors? A. Yes, sir.

Q. And is that reported daily in the same manner that you have stated the receipts are reported? A. These figures are taken daily from the certificates that come to the office.

601

Q. Have you prepared from your office statistics a table showing the number of pounds of poultry destroyed by your inspectors as diseased or unfit poultry for the period from 1928 through 1933? A. Yes, sir.

Q. I hand you this paper and ask you whether that represents a correct transcript of your official Government records? A. Yes, sir, this is a copy that I got up myself, so I know this is correct.

Q. You got this out yourself? A. Yes, sir.

602

Q. For the purposes of this trial? A. Yes, sir.

Q. How many pounds of poultry was condemned and destroyed by your inspectors in the year 1933? A. 289,228 pounds.

Q. More than a quarter of a million pounds? A. Yes, sir.

Mr. Rice: I offer this paper in evidence.

The Court: All right, it is received.

(Marked Government's Exhibit 14 in evidence.)

603

Q. Dr. Ives, do you know what date the Live Poultry Code went into effect, approximately? A. The latter part of April.

Q. The latter part of April, 1934? A. The latter part of April, 1934.

Q. Did the number of pounds of diseased poultry destroyed by your inspectors increase after the Live Poultry Code went into effect?

Mr. Heller: That is objected to, the document speaks for itself; it is in evidence.

The Court: First I think we ought to have the date fixed when it went into

604 effect; he said some time in April, can you agree on the date?

Mr. Rice: We will establish by proof, your Honor, that it went into effect April 23, 1934.

Mr. Heller: You mean that is when the President said it shall become effective. When it actually functioned, when the Code Authority began to function, that I don't know.

605 Mr. Rice: We will submit definite proof upon this topic.

Q. After April 23, 1934, did your inspectors condemn more live poultry than they had previous to that time?

Mr. Heller: I object to that. The document speaks for itself. It is in evidence.

The Court: You may read it, if you wish to.

Mr. Rice: Very well.

606 The Court: It is in evidence. He does not have to testify any more. You may just read it.

Mr. Rice: Prior to April, 1934, namely, in February, 1934, over 13,000 pounds of poultry were destroyed by Dr. Ives' inspectors; March, over 17,000 pounds; in April, 13,000 pounds; in May, 14,000 pounds; in June, 22,000 pounds; in July, 21,000 pounds; in August, 29,000 pounds; and in September, 37,000 pounds.

Q. Dr. Ives, are you familiar with the conditions and circumstances under which your inspectors condemn live poultry? A. Yes, sir.

607

Q. And have you been familiar with those conditions and circumstances throughout the period from 1926 up to the present time? A. Yes, sir, I have.

Q. And do you know what is the cause of the destruction and condemnation of larger amounts of poultry since April 23, 1934? A. The cause?

Q. Yes. A. The demand for better poultry on account of the provisions of the Code, I believe.

608

Q. You are referring to the Live Poultry Code? A. Yes. The Code requires that the slaughterer kill straight killings, in other words, as received from the commission merchant, and therefore they demanded a less quantity or a smaller quantity of poultry, that they could not handle or that they could not use, and naturally they required us to be more particular in eliminating more poultry. I believe that is the reason for the greater amount of poultry being destroyed than formerly.

609

Q. When your inspectors inspect a freight carload of poultry, about how many chickens do they actually handle A. They must handle not less than 100 individually, up to 200 birds in each car, before they can give a certificate of condition.

Q. And do they make any inspection of the other chickens that they do not actually handle? A. They actually feel many more in brushing them aside in the cars, so they can see most all of the poultry that is in the different layers.

Q. And what do they do when they see a diseased or sick chicken? A. They immediately withdraw it from the deck in the car and throw it out in the aisle until they get through, and

610 then they are all destroyed that he has picked out.

Q. What is the manner of destruction? A. The manner?

Q. Yes. A. By breaking the necks, and put them in a metal container and denature them.

Q. They are all denatured? A. They are all denatured.

Q. About what percentage of freight poultry coming into New York is actually condemned and destroyed and denatured, as you have de-
611 scribed, just the approximate percentage? A. Well, I do not know; it must be less than one per cent.

Q. Would it be as much as one-third of one per cent.? A. I believe it is about one-third of one per cent., I recall that now.

Q. Referring to poultry that comes in by truck, how do your inspectors ascertain that a truckload of poultry has come into New York? A. The applicant, or at least the party that brings the truckload in, rings us up and asks for an inspection.

612 Q. And if he does not ring you up? A. We do not know he comes in. Of course, possibly a few days after we will hear about it, but that is all we know about it.

Q. You have no system of investigating the amount of truck poultry coming in? A. No, sir; we are not investigators in any sense.

Q. And if the market man does not call you up and request an inspection of the truck poultry, then you do not inspect their poultry, is that right? A. That is right. I might say our regulations—at least, the one thing we can do is to inspect poultry when we are asked. We

613

cannot inspect anybody's poultry if they do not ask us to.

Q. What do your regulations provide? A. That we can inspect poultry on request, providing the applicant pays the reasonable cost of inspection.

Q. Has your office kept a record of all truck poultry which you have inspected? A. Yes, sir.

Q. And of all express poultry which you have inspected? A. Yes, sir.

Q. And of all freight poultry? A. Yes, sir.

614

Q. I hand you five reports and ask you what those documents are. A. The certificates are five copies of different individual inspections of truckload poultry coming into New York for Schechter Brothers in one case and the Rugby Live Poultry Company in the other. That is four Schechter Brothers and one Rugby Live Poultry.

Q. Now, the four applying to the Schechter Brothers are at what address? A. 991 Rockaway Avenue.

Q. And the other? A. 858 East 52nd Street, Brooklyn.

615

Q. Do you know, Dr. Ives, whether those are all of the inspections which your office made on behalf of any of the Schechters, on behalf of any person by the name of Schechter, during the calendar year 1933 and during 1934 up to July of this year? A. These are the only inspections made on application of Schechter Brothers or Rugby. We might have inspected some for them under some other applicant; I cannot say as to that.

Q. Why are you sure that these are the only inspections that you have made on the applica-

616 tion of any of the Schechter Brothers or Rugby Live Poultry Market? A. Because I took these from the records, from our records in the office.

Q. And those records show all inspections that you have made on behalf of Schechters? A. Every inspection we ever made we have a record of it.

Q. And every inspection made on behalf of A. L. A. Schechter Poultry Corporation, or Schechter Live Poultry Market, Inc., is that right? A. If Schechter is connected with it, we
617 would have that certainly under the name of Schechter, but the A. L. A., I do not know whether I have had anything under that name or not.

The Court: A. L. A. Schechter.

The Witness: A. L. A. Schechter, we haven't had any such thing any more than this.

Q. Then these five reports represent all of the inspections that you have made from January
618 1, 1933, up to and including the month of July, 1934, on behalf of anyone in the live poultry trade by the name of Schechter? A. Yes, sir.

Q. Or by the name of A. L. A. Schechter Poultry Corporation, Schechter Live Poultry Market, Inc., or the Rugby Live Poultry Market, is that correct? A. Yes, sir.

Mr. Rice: I offer these in evidence.

Mr. Heller: Objected to as not material, not within the issues, not the subject of any of the counts of this indictment.

The Court: Overruled.

Mr. Heller: Exception.

619

The Court: It is received.

(Marked Government's Exhibit 15 in evidence.)

Q. These reports were kept in the regular course of the duties of your office? A. I did not get the question.

Q. I say, were these reports made in the regular course of the duties of your office? A. These particular ones are copies of the regular reports.

Q. These are copies? A. These are copies. 620

Q. And you have the originals in your office? A. Yes.

Q. And you could produce the originals? A. Yes.

Mr. Heller: I object to the copies as not being the best evidence.

The Court: That is true. If he insists on that, you either have to get the originals or certified copies.

Mr. Rice: Yes; of course, I recognize that, your Honor. I had hoped not to 621
disorganize the very complete files of the Joint Inspection Service, and we are quite willing to produce the originals and give counsel an opportunity to compare them.

Mr. Heller: I have no objection to this with the exception of the Rugby Live Poultry, which is not a party to this proceeding.

The Court: I will take it and if it is not connected up, I will strike it out. It is easier to take them all together.

Mr. Rice: I understand you waive the objection?

622 The Court: The objection is withdrawn.

Mr. Heller: That is right.

The Court: Except the objection you made to the Rugby.

Mr. Rice: Now, gentlemen of the jury, Exhibit 15 indicates that on April 20, 1933, an inspection was made of 57 baskets of live poultry on behalf of Schechter Brothers of 991 Rockaway Avenue, Brooklyn; at 5:14 A. M. and that the inspection was made at the slaughterhouse.

623 The exhibit further shows that on July 8th, 1933, an inspection was made on behalf of the Rugby Live Poultry Market at No. 858 East 52nd Street, Brooklyn, of 84 baskets of live poultry; that this inspection was made at Elizabeth, New Jersey. It further shows that on May 28th, 1934, two lots of poultry, being 15 baskets and 50 baskets, a total of 65 was made on behalf of Schechter Brothers also at No. 991 Rockaway Avenue, Brooklyn, on May 28th, 1934.

624 The inspection of 105 baskets of live poultry was made on behalf of the Schechter Brothers at 991 Rockaway Avenue on May 30, 1934, and an inspection of 86 baskets was made on behalf of Schechter Brothers of 858 East 52nd Street, Brooklyn, on May 30, 1934.

Q. Dr. Ives, I hand you a paper which is entitled "Rules and Regulations of the Secretary of Agriculture Governing the Inspection and Certification of Live Poultry," and attached to it a mimeographed set of instructions. Will you tell us what these documents are?

625

Mr. Heller: I object to him talking about this at all, they are not in evidence, and we are not being charged with violation of any rules and regulations of any Federal department.

The Court: The peculiar wording of the Code which calls for inspection does not seem to point out how it shall be required. If the Secretary of Agriculture has required inspection, why then probably I will have to take notice of that.

626

Mr. Heller: But we are bound by the indictment, and the indictment does not say that.

The Court: What does the indictment say?

Mr. Heller: We have failed to comply with the rules and regulations of the Municipal Department.

Mr. Rice: If your Honor please, we will prove not only the regulations of the Bureau of Agricultural Economics, but also the regulations of the Department of Health made under the City Ordinance.

627

The Court: Wait until I see. I do not see that that alleges exactly——

Mr. Heller: Page 24. Your Honor will find it at the top, beginning with the fourth line.

Mr. Rice: If your Honor please, may I explain the relevancy of this?

The Court: Any rule, regulation or ordinance of the City of New York.

Mr. Rice: That is correct.

The Court: If they can show that there is a combined commission that is pro-

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vided by the City and by the Department of Agriculture, they can show it.

Mr. Rice: That is exactly what we propose to show.

The Court: They may show that. Objection overruled.

Mr. Heller: Exception.

Q. Now will you tell us what the documents are which I have just handed you, Dr. Ives? A. The first one is the Rules and Regulations of
629 the Secretary of Agriculture.

Q. Will you speak up a little, Doctor? A. Yes, which is the Act of Congress, empowering the Secretary of Agriculture to make the regulations for the inspection of live poultry and these are the regulations that he has promulgated. The second one, are instructions of the Chief of the Bureau of Agricultural Economics, regulating the manner in which we must inspect poultry.

Q. Are your instructions made in accordance with the rules and regulations and instructions which you have just described? A. In accordance
630 with those rules and regulations, yes.

Mr. Rice: I offer these Rules and Regulations and Instructions in evidence.

Mr. Heller: I object on the ground that it is not pleaded in the indictment.

The Court: Well, I will take them, but you will have to show, Mr. Rice, some rule or regulation of the City Department for these combined regulations, otherwise you do not bring yourself within the terms of the indictment.

Mr. Rice: Very well, your Honor. Do I understand that counsel does not object

631

on the ground that this is not a certified copy of a public document?

Mr. Heller: I do not so object.

The Court: Let it be marked.

(Marked Government's Exhibit 16 in evidence.)

The Court: If it is a regulation of the City you will have to prove it in the proper way.

Mr. Heller: Of course I object to his even proving any regulation.

632

The Court: You can make that objection when he brings it in, we will take care of that when he gets to it.

Q. Dr. Ives, I hand you a pamphlet entitled, "Sanitary Code and Regulations Governing the Keeping and Sale of Live Rabbits and Poultry," will you tell us what that document is?

Mr. Heller: I object to that on the ground that it is not in evidence as yet.

Mr. Rice: I am laying a foundation for offering it.

633

The Court: Of course that does not prove it.

Mr. Heller: I object to his reading from anything that is not in evidence.

The Court: No.

Q. Will you tell us what that document is, Dr. Ives?

Mr. Heller: Exception.

A. This is a printed copy of the Section of the Sanitary Code of the Health Department of the

634 City of New York relating to the keeping and inspection of live poultry in New York City.

Q. And in the operation of your Inspection Service do you have occasion to be governed by the provisions of the Sanitary Code or to relate your inspection in any way to the provisions of that Sanitary Code? A. The work is the creation——

Mr. Heller: I object to it.

The Court: He didn't ask you that;

635 answer the question.

Q. Just answer the question. A. What was that question again?

Q. Do you have occasion to use the Sanitary Code in connection with your inspection service in any way at all? A. Well, except they lay down rules that we have to do. I do not know just how to answer that question.

Q. They lay down rules? A. And they tell us in these rules what we must do.

Q. And you do that? A. Yes, sir.

636 Q. In the course of your inspection? A. Yes, sir.

Mr. Rice: I offer the Sanitary Code in evidence.

Mr. Heller: That is objected to on the ground that it is not pleaded.

The Court: What?

Mr. Heller: On the ground that it is not pleaded. There is no foundation laid down at this time for offering it in evidence.

The Court: But you do not object to the form?

637

Mr. Heller: In what way?

The Court: I mean, of course, they would be required to prove it either by a certified copy or through the mouths of witnesses. If you object to the manner of proof here, I have to sustain the objection.

Mr. Heller: I do not want to put the Government to any trouble to get a certified copy. I won't object on that ground. I will, however, object that it has not been pleaded in the indictment.

638

The Court: That is the ground of your objection?

Mr. Heller: That is right.

The Court: I will overrule your objection, if you do not object to the form.

Mr. Heller: No.

The Court: You may have an exception.

(Marked Government's Exhibit 17 in evidence.)

639

Q. Dr. Ives, have you another pamphlet entitled "Section of Sanitary Code and Regulations Governing the Conduct of Poultry Slaughter Houses." Will you tell us what that document is? A. That is a section of the Sanitary Code relating to the regulations of the conduct of slaughter houses.

Q. And how does that document differ from the one you just identified?

Mr. Heller: I object to the witness describing a document which is in evidence.

Mr. Rice: Very well; I will withdraw the question.

640 Q. In the course of your inspection service, are you governed to any extent by the regulations provided in the pamphlet you now hold in your hand?

Mr. Heller: I object to that question as not binding on the defendants.

The Court: Overruled.

Mr. Heller: Exception.

The Witness: No, sir.

641 Q. Do you have any occasion to invoke the provisions of the pamphlet which you now have in your hand? A. No, sir.

Q. Do you have any relation to it whatever? A. No.

Q. Do you know whether the regulations of the Sanitary Code make any regulation with respect to the inspection of poultry under the joint inspection service?

Mr. Heller: I object to the form of the question. He said he had nothing to do with it, and now counsel is questioning
642 him about it.

The Court: Well, it speaks for itself.

Mr. Heller: But it is not in evidence, your Honor.

Mr. Rice: I offer the pamphlet in evidence.

Mr. Heller: I object to it. I haven't any idea what it is all about.

Mr. Rice: Dr. Ives has explained that this pamphlet contains excerpts of the Sanitary Code of New York and Regulations Governing the Conduct of Government Slaughter Houses. It may well be

true that these regulations do not govern the inspection services of Dr. Ives, nevertheless they are material in this case.

The Court: I haven't examined them yet, so I don't know. Let me see the document.

Mr. Rice: May I point out the relevancy?

The Court: Wait a minute. Yes, what is there about it, why do you think it is relevant?

644

Mr. Rice: The Live Poultry Code requires inspection in accordance with the requirements of the local area. Now we offer these two pamphlets in evidence to show that the requirements of the local area are that inspections be made by the Joint Inspection Service which is Dr. Ives' office. This is a part of the connecting links that counsel for the defendants has asked for.

Mr. Heller: I haven't asked for it and the witness has stated that he is not bound by it, he has nothing to do with these rules. We are not bound by it in any way, I have never seen it.

645

The Court: Where is the part that relates to inspection?

Mr. Heller: That is already in evidence; that is a different pamphlet.

The Court: Wait a minute——

Mr. Rice: If your Honor please, may I withdraw that exhibit for the time being and reoffer it later?

The Court: Yes; I can't find anything about inspection in it.

646 Mr. Rice: Yes, I think you are right; that is fully covered in the previous pamphlet. This will become pertinent in connection with the testimony of another witness.

The Court: Yes, that may be. Then that is withdrawn.

Q. Dr. Ives, approximately what percentage of the freight and express poultry consists of ducks?

647 Mr. Heller: That is objected to as not material in this issue.

The Court: If they have put them together, why, we must know something about them.

Mr. Heller: Are those covered in those exhibits you offered?

Mr. Rice: No.

This evidence, if your Honor please, is for the purpose of computing the percentage of live poultry, of live chickens coming from outside of the State into the 648 State of New York. By finding out the percentage of ducks included in the trucked and expressed poultry we may compute—

The Court: These schedules you had included chickens and ducks?

Mr. Rice: Yes, your Honor,

Mr. Heller: Then it is all in evidence now. I object to him testifying any further.

The Court: I do not know whether it is separated on the papers or not.

Mr. Rice: They are not segregated.

649

Mr. Heller: They are given by years and months.

The Court: He says they are not segregated as between chickens and ducks.

Mr. Heller: I wish he would qualify it first.

The Court: He is the man who has charge of the records, and they are made under the report.

Q. Do you know approximately what percentage of the trucked and expressed poultry sold in the New York market consists of ducks? A. Is this all the poultry that arrives in New York, you mean, all the poultry by freight or express? 650

Q. Well, let us ask the question this way: What trucked and expressed poultry coming from within the State of New York to the New York market, what percentage of that poultry consists of ducks—do you understand my question? A. Well, no.

(Question repeated by the reporter.)

A. I understand it now, but I don't know that I can answer it. 651

Q. Can you give us an approximate percentage? A. Well, I don't know——

Q. Have you computed this? A. I have computed that sometime.

Q. Do you have any memorandum which will refresh your recollection on that subject? A. I think I have here.

Q. Will you refer to it?

Mr. Rice: In order to save the time of the Court, I should like to direct the witness' attention——

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The Witness: Three and a half per cent.

Q. Did you understand my question? A. Three and a half per cent.

Q. No, I am asking you what percentage of the local poultry trucked to the New York market from within the State consists of ducks? A. One and a half per cent.

Q. How much? A. One and a half per cent.

Q. You mean one and a half per cent. of all
653 poultry? A. Yes.

Q. One and a half of all poultry including freight poultry, truck poultry and express poultry coming from all over the United States consists of ducks, is that right? A. I think that is about correct; I am sure I do not—I can't quite get that.

Mr. Rice: I wish to state, if your Honor please, that we have computed from the exhibits that are now in evidence that 96.4 per cent. of all of the poultry offered on the New York market comes from
654 states other than New York. Now we propose to show that of that remaining 3.6 per cent., that a large percentage of that consists of Long Island ducks.

Mr. Heller: State your figures, and I will concede them. It doesn't make any difference to me.

Mr. Rice: I have just stated them.

Mr. Heller: All right; that is satisfactory. We will accept them as given by counsel.

Mr. Rice: All right, and I will state further that 60 per cent. of the 3.6 per

cent. of local poultry consists of Long Island ducks. 655

Mr. Heller: That is satisfactory to me. I find no fault with it.

Mr. Rice: That is conceded then.

Q. Dr. Ives, I believe you testified that you are a veterinarian? A. Yes, sir.

Q. You understand poultry diseases? A. Well, I understand some of them. I would not say I understand everything.

Q. You don't know everything there is to know about poultry diseases? A. I don't claim to, no, sir. 656

Q. You have studied poultry diseases? A. Yes, sir.

Q. Do you know whether or not poultry diseases are contagious to other poultry?

Mr. Heller: That is objected to, your Honor.

The Court: On what ground?

Mr. Heller: On the ground that it is immaterial to the issues herein.

The Court: Oh, no. Objection overruled. 657

Mr. Heller: Exception.

A. Yes, sir, it is.

Q. Poultry diseases are contagious? A. Are transmissible to poultry; contagious.

The Court: All of them, or some of them?

The Witness: Well, all infectious diseases.

Q. Is a chicken a delicate animal or is it a tough animal? A. It is a delicate animal.

658 Q. Do you know, Dr. Ives, whether among veterinarians chickens are considered perishable commodities? A. I should imagine it was perishable.

Q. Do you know whether chickens are perishable? A. I would call them perishable.

Q. In what respect? A. Well, they die, so certainly they are perishable.

Q. I don't mean that, Dr. Ives,—— A. You mean shrinking in weight, and so forth?

659 Q. Well, are they subject to great shrinkage and subject to diseases more than other animals? A. Well, the way they are handled they are probably subject to a large death rate in transportation because they are not handled so carefully as other livestock. There is a great number put into one coop, for instance.

Q. Do you know whether a substantial number of chickens die in transportation? A. They do.

Mr. Rice: Your witness.

Cross examination by Mr. Heller:

660 Q. Dr. Ives, you are not an M.D., are you? A. No, sir.

Q. Now, you computed a table——

The Court (to the witness): Have you any degree?

The Witness: Yes, sir.

The Court: What is that?

The Witness: Doctor of Veterinary Surgery.

Q. You say you have computed personally Government's Exhibit 14. Just look at it, please. A. I got the figures up, I did not type it, if that is what you mean.

Q. You supplied the figures? A. Yes, sir.

Q. And Government's Exhibit 14 gives the number of sick and other diseased chickens for the year 1934, month by month, is that correct? A. Yes.

Q. Have you computed them for the year 1933, month by month? A. I haven't, no, sir.

Q. You have not computed, have you, for the year 1933 the number of chickens killed month by month because of certain diseases or for some other reasons? A. We have it in our office, but I haven't it here.

Q. Can you bring that table with you? A. I can bring it, yes, sir.

Q. Do you know, offhand how it compares between month and month, say January of 1934 and January of 1933? A. I have it I think right in my pocket that I copied off our report.

Q. How many months have you copied? A. I do not know, I would have to look. I copied from April through to December.

Q. And have you copied them from January to April? A. I haven't them with me, no.

Q. You have that at your office? A. Yes.

Q. Is it a fact that during certain months of the year some chickens are apt to become more quickly sick than at any other time? A. Yes, sir.

Q. What months are those? A. The months of greatest sickness would be from August to February, in the winter.

Q. When? A. From August until February.

Q. So that January and February of each year would have a greater number of sick chickens then during the months of July and August, for instance? A. Yes.

Q. That is so, isn't it? A. Yes.

Q. Now, by a sick chicken—a sick chicken is sometimes designated as a cull, is it not? A. Sometimes, but not by us.

Q. What do you call a sick chicken? A. Call a sick chicken one that has symptoms of disease as laid down in the regulations of the Chief of the Bureau of Agricultural Economics.

Q. I am asking you what do you consider a sick chicken, when you see one? A. Well, if you show it to me, I will tell you.

665 Q. If a chicken was overfed would you say it was a sick chicken? A. No, not because it was overfed.

Q. If a wing was broken would you say it was a sick chicken? A. No.

Q. You would not say that? A. No.

Q. And you say during the year of 1926 and three years thereafter the Government maintained some kind of school for the learning of what is considered diseases—— A. Yes.

Q. (Continuing.) —in the chicken industry? A. Yes.

666 Q. And from that time on the Government has not maintained such a school, is that correct? A. That is right.

Q. And how many of your employees have been employed since 1929? A. You mean how many——

Q. Inspectors, yes, how many of the inspectors that are under your jurisdiction at this time have come into the service since 1929? A. None.

Q. All prior to 1926? A. We have had two veterinarians come in since.

Q. Since that time? A. Yes.

Q. Suppose I show you a picture and I ask you to look at it. I ask you whether this is a

fair representation as to how chickens come in on trains? A. Yes, that is a live poultry type of car.

Q. That is a fair representation of the situation as it is when the chickens come in? A. Yes.

Mr. Heller: Any objection?

Mr. Rice: No.

Mr. Heller: I offer it in evidence.

The Court: Just the picture?

Mr. Heller: Yes, sir.

668 The Court: If you want to keep the pamphlet, without tearing that page out, cover up all but the picture.

Mr. Rice: What page is that?

Mr. Heller: Page 6.

(Marked Defendants' Exhibit A in evidence.)

Mr. Heller: May I show this exhibit to the jury, your Honor?

The Court: Yes.

669 Q. Dr. Ives, am I right in saying that one of these cars of poultry is divided into 128 layers? A. Yes, sir.

Q. Now, what is the average for each deck? A. About 35 or 40 chickens.

Q. Do you know about how many number of chickens there are in an entire carload? A. About 4,000 average.

Q. And each inspector is assigned to examine various numbers of carloads a day? A. Yes, sir.

Q. And he sticks his hand in each and every tier and examines the neck in order to ascertain the weight, is that correct? A. Correct.

670 Q. Now you said that if he averages about 100 chickens—— A. No, he averages more than that, he cannot do less than that.

Q. Well, about how many do you say he actually puts his hands on? A. Probably 200 at least.

Q. Out of 4,000? A. Out of 4,000, yes, sir.

Q. And then he passes the car as fit for human consumption? A. No.

Q. But what then does he do, give an inspection after that? A. It is approved for unloading.

671 Q. And that is your inspection, isn't it? A. That is a preliminary inspection.

Q. You mean after it is unloaded it is inspected again? A. Not after, but during the process of unloading.

Q. Who does the next inspecting? A. Well, the inspector is supposed to come back there from time to time during the unloading.

Q. What kind of a certificate does he give when he examines 200 chickens out of the 4,000 that are in the car, what kind of a certificate does he give?

672 Mr. Rice: I object to that, he did not say that the inspector examines only 200 chickens out of 4,000, he said he actually feels of 200 chickens.

The Court: You had better frame it that way, because he said he looked at them as he was going along.

Q. Well, now, these chickens are compact, are they not? A. Fairly so.

Q. He brushes aside a few at a time and takes one and feels the neck? A. He does not need to brush them aside because he can see practically half of them without brushing them away.

673

Q. You mean the half in front of him, is that correct? The other half that are in back of him he cannot see? A. Yes.

Q. So he puts his hand in and examines about, say about 200 chickens on an average, is your statement, in a carload of 4,000? A. He examines individually, yes, sir.

Q. Individual chickens? A. Yes.

Q. And the rest he looks at? A. Yes.

Q. By looking at the back of the tier can he say whether a chicken has a disease in there or not? A. If he sees it at all he can, but if he does not see it he can't.

674

Q. It has to strike his eyes, otherwise he can't detect it? A. Right.

Q. In other words, only 200 out of the 4,000 he can actually say whether they have a disease or not? A. No, that is not true.

Q. Not even out of 200, is that correct? A. I say—you asked a question if he could only say that 200 was healthy, that he saw?

Q. I mean with certainty. A. Well, absolutely, he could say more than that, because he can see —all he can see he can practically say are healthy.

675

Q. Tell us what kind of diseases do chickens suffer from? A. What kind of diseases?

Q. Yes. A. Why, infectious bronchitis is one of the principal diseases in winter time—they have cholera——

Q. In plain English is that a cold? A. That is bronchitis, yes.

Q. And what else? A. What other diseases?

Q. Yes, what other diseases do inspectors look for? A. They look for cholera tuberculosis.

Q. Well, can you determine whether a chicken has tuberculosis or not by a mere inspection from the surface? A. No.

Q. You have to open up the chicken don't you? A. Yes.

Q. And cholera the same way? He might see—— A. All he can do is go by symptoms.

Q. What symptoms are evidence, any man looking at a chicken, can ascertain for himself whether or not that particular chicken has cholera? A. He could not tell absolutely.

677

Q. In other words, you can only say with certainty whether a chicken has a disease or not when it is opened up, is that correct? A. Yes.

Q. As a matter of fact, Doctor, the inspection is merely for the purpose of finding out whether the chicken has the proper weight, is that it? That is the main feature of it? A. The crop weight, you mean?

Q. Yes. Isn't it a fact that at one time they used to feed the chickens with charcoal and that is the reason why this inspection is made now, isn't that correct? A. I don't know about charcoal. That would do them good.

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Q. They used to give them something in order to give them weight? A. Charcoal is very light.

Q. They give them something else that you know of in order to increase the weight? A. Yes.

Q. Well, they give them something else, you know that, in order to increase weight? A. Yes, sir.

Q. And for that purpose we have this inspection service? A. That is not all the reason.

Q. Now, you said on direct examination that a certain fee is to be paid for such inspection? A. Yes, sir.

Q. Does that go to the Government or to you? A. That goes to pay the expenses of the inspection.

Q. And you deposit that to your account? A. To our account, the Joint Inspection Service account.

Q. And out of that fund you pay out to these various inspectors, is that correct? A. Yes, sir.

Q. Now, assume that you find some chickens with a cold, or bronchitis, as you call it, isn't it a fact that you put three X marks on the coops 680
and pass them for sale, but you require that the sale take place within twenty-four hours? A. Occasionally we do.

Q. In other words, you permit the sale of those chickens with colds, provided that they are sold within twenty-four hours? A. That doesn't say they have colds, it means that they originated in a car that has been inspected with that disease; in other words, that there has been a lot killed from that car with that disease.

Q. Well, after the chickens are loaded on the truck, isn't it a fact that some of the people 681
that purchase the chickens ask you to destroy some of the chickens that they think are unfit, besides the inspectors? A. Do you mean at railroad terminals?

Q. Yes. A. Yes, I believe they do.

Q. In other words, the people that purchase them, in addition to the inspectors, look at the chickens for the purpose of determining whether they are diseased or culls? A. Yes.

Q. And they ask you to destroy some of them? A. That is correct.

Q. Do you know whether there was a marked increase in chickens that came into the City of

682 New York, or the markets that you have testified to, in the month of September, over last year or over the month of January of this year? A. I don't get that question.

Q. All right, I will withdraw the previous one. The number of chickens rejected or destroyed by you would vary with the number of chickens that come in, isn't that correct? Out of a greater number you would destroy more chickens? A. Ordinarily, yes.

683 Q. There has to be some average in order to have some relation, and one has some relation to the other, isn't that correct? A. Yes.

Q. Now, will you tell us where you got the figures such as are represented by Government's Exhibits 12, 9, 7, and the other exhibits—will you tell us where you got these figures from? A. These figures are the number of cars of live poultry received in New York, and it is tabulated direct from our certificates.

Q. Is there any organization that supplies you with these figures? A. Supplies us?

684 Q. Yes. A. No; you mean this particular one here?

Q. No, all of these exhibits. May I have all of the Government exhibits? Look at Government's Exhibit 13 and tell the jury just where you got these different items that represent that exhibit. A. This paricular report is a 1926 report of the express, amount of express poultry coming in. This express poultry at that time was tabulated by the Market News Service, and did not have any relation to the amount of poultry that we inspected.

Q. In other words, that was a private agency that compiled that particular record, is that cirrect, at this time in 1926? A. Yes.

Q. You do not know where they received their information, do you? A. Yes, I do.

Q. From whom did they receive the information? A. From the railroad companies.

Q. Can you state with reasonable certainty that they had each and every record before them when they compiled that record from all of the railroad companies? A. The chances are 686
there was some they never got.

Q. In other words, some may be missing? A. Yes.

Q. Some may never have been sent to them? A. Absolutely.

Q. You are not in a position to tell us just which ones they received and how many they didn't, is that correct? A. That is right.

Q. How about the year 1927? A. I couldn't say with certainty just when that service stopped; in fact, they get that information yet of express poultry from every railroad.

Q. You mean the private agency? A. Well, 687
it is a Bureau of Agricultural Economics.

Q. Have you heard of the firm of Lerner Barry, or something of that kind? A. Yes, sir.

Q. Who compile a lot of this literature for the Government? A. It has nothing whatever to do with this.

Q. Where did these figures come from? A. These come from our Market News office.

Q. Yes; and who gave the information that is combined in these papers, marked Exhibit 13? A. As I told you, these 1926 and 1927 come direct from the railroad companies.

688 Q. Now, 1928. A. Well, 1928, from there on, it all comes from—comes from our office; got the figures from our office.

Q. For the years 1927 and 1928, assuming that the private agency did not receive all the reports from the——

The Court: He said 1926 and 1927.

Mr. Heller: 1926 and 1927, that is all I am relying on.

The Court: You said 1927 and 1928.

689 Q. (Continuing.) Oh, '26 and '27. Now, if those papers, documents, did not come in or were not reported to this agency, they would not be included herein, is that correct? A. I believe so.

Q. Now, in 1928 you say your office compiled these records, is that correct? A. Yes, sir.

Q. Where did you get your information from? A. From our inspection records.

Q. Now, assuming that certain poultry was not inspected, you would not have a record of it, would you? A. No.

Q. Isn't it a fact that some poultry is in-
690 spected in Long Island? A. Inspected in Long Island?

Q. Yes. A. It is inspected out on Long Island, you mean?

Q. I beg your pardon? A. It is inspected out on Long Island? You are referring to ducks?

Q. Some other source than the sources that you gave. A. No matter whether other sources or not, we have the records of it just the same.

Q. Who would send them to you if you did not make the inspection? A. If the inspection was made, we made it.

Q. Couldn't poultry have been inspected by some other person who had knowledge as to the fitness of a chicken or not?

691

Mr. Rice: I object to that. That is asking the witness to interpret the rules and regulations of the Board of Health under the Sanitary Code.

The Court: What was the question?

Mr. Heller: If the poultry were inspected by some other sources, by sources other than by Dr. Ives, such inspection would not be included in the tabulation of these figures.

Mr. Rice: That is not the question that I objected to. I have no objection to that one.

692

The Court: Very well.

A. If it was inspected by another agency than us, we would not have a record of it.

Q. That would not show in the exhibits that you offered? A. No, sir.

Q. Now, did your office compute all of the figures for the year 1929 for both express and trucked poultry? A. Yes, sir.

Q. That is, it included all that which has been inspected by you or your assistants? A. Yes, sir.

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Q. And does that hold true for the years 1931, 1932, 1933 and 1934? A. All after 1928.

Q. And you have a record in your office—that is all the poultry that your office inspected for those years? A. Yes.

Q. And it was from that that these figures were compiled? A. Yes, sir.

Q. Now, do you make a record as to how much poultry comes in from Alabama? A. Yes, sir.

694 *Leland D. Ives—By Govt.—Cross*

Q. Do you also make a record that certain poultry comes in from each and every State, every time that it comes in? A. At the time that it is inspected it is recorded on every certificate where it comes from.

Q. You mean the poultry is? A. Yes.

Q. When you make your inspections do you keep those certificates? A. Every certificate is kept, yes; we have every certificate that we ever wrote.

695 Q. You get your information from the records of the railroad company? A. Yes.

Q. Well, how do you get your information? A. What information?

Q. How much poultry comes in from Alabama on a certain day in a certain year? A. Well, if a load of poultry comes in and the man says it comes from Alabama, we take his word for it.

Q. But you have no independent way of ascertaining whether it comes from Alabama or Connecticut or where? A. No.

Q. You take the word of the man that tells you where it came from? A. Yes.

696 Q. And that is how you compute your records? A. Yes.

Q. Now you said on direct examination that since the N. R. A. came into existence the market men asked you to pay more attention to your inspection, and for that reason you found more diseased chickens, is that correct? A. I do not say we found more diseased chickens, we took more out.

Q. And unfit chickens, is that correct? They used pressure on you to make a closer examination, and up to that time, that is, the last few months of this year, you made indiscriminate

examinations, is that it? A. Well, we made a closer examination.

Q. More particular, is that the idea? A. More particular, yes.

Q. Now, you have been more particular, is that it, and that is at the request of the market men? A. Well, it is at the request of the buyer.

Q. Of the purchaser? A. He wouldn't take them; throws them back.

Q. And up to that time he was willing to take whatever came in? A. I do not know whether 698
he was willing or not; he did.

Q. And you gave him the inspection as long as he was willing to take it? A. We wouldn't see them, individuals that he picked out; if he did not bring them to our attention specifically we would not see them again.

Q. In other words, the purchaser had to call it to your attention for you to see it, is that correct? A. Well, he would in individual cases, yes.

Q. In other words, perhaps 50 per cent. of the rejected poultry was poultry called to your attention by the purchaser, is that right, as being 699
unfit? A. Well, they called our attention to a good lot of poultry that we did not condemn.

Q. But they found it to be unfit and they called it to your attention? A. They said it was unfit; maybe we say it isn't.

Q. Well, the average market man knows, does he not, a man in the business a long time, and purchases chickens, what a fit or unfit chicken is? A. I don't think so.

Q. Is it possible for a chicken to contract a disease between the time that it passes your inspection and the time it reaches the place of busi-

ness? A. There is time for symptoms to be more developed, possibly.

Q. In other words, sometimes you cannot tell the symptoms from a superficial examination, is that correct? A. They are not always well marked, no, sir.

Q. And that may develop in the course of twenty-four hours, isn't that correct? A. True.

Q. And it happens very frequently, is that it? A. Yes, sir.

701 Q. As a matter of fact, you said the chickens are handled with very little care; in other words, coops are placed one on top of the other? A. Yes.

Q. And the coop may fracture a head, for instance, of a chicken, may it not? A. Very often.

Q. May fracture a wing? A. Yes, sir.

Q. It may catch a cold in transportation, may it not? A. If it is going far enough, yes.

Q. Anything might happen between the time a chicken is inspected and the time it is sold, is that correct? A. I would not say anything might happen to it. Several things might happen to it.

702 Q. Well, several things might happen to it. Now, do you maintain a night force for inspection purposes? A. No, sir.

Q. You limit your inspections between what hours? A. They are not really limited. Daylight hours we are supposed to——

Q. 9 to 5? A. Daylight.

Q. Have you any definite hours? A. (No answer.)

Q. I beg your pardon. A. No, sir.

Q. But it has got to be during daylight? A. Yes, sir.

Q. You don't inspect at night? A. We do.

Q. When? A. Well, if they have an accident or anything, they say they break down, we give them inspection often after hours.

Q. Where can you be reached after five o'clock? A. In our office.

Q. You mean you keep your office open all night? A. No.

Q. Only during daylight? A. No, that is open longer, but we don't have inspectors there.

Q. You do not make any inspections on Sunday, is that correct? A. We have done such 704
things.

Q. Occasionally? A. Yes.

Q. Unless someone has your private 'phone and you can locate the inspector, they could not get an inspection on Sunday? A. Unless they made an appointment Saturday, they could not get it Sunday, no.

Q. Without appointment they could not get it, is that correct? A. Correct.

Q. Just how many inspectors did you say that you have, and whereabouts are they located? A. We have fourteen live poultry inspectors. 705

Q. I will limit myself to live poultry. You have fourteen? A. Yes.

Q. How are they distributed? A. There is one at Eastport, Long Island, there is probably six at New York Central, 60th Street, there is three in West Washington Market sometimes, sometimes four; one on the Lackawanna, Jersey; one at Communipaw, Jersey. I do not know how many that is.

Q. How many chickens does an inspector examine, on the average, each day? A. I suppose his average would be about four cars a day,

706 probably maybe eight or ten hundred or a thousand chickens.

Q. I mean how many chickens does he inspect a day, I do not mean that he actually takes hold of in his hands; what is the total number of chickens that he examines per day per average? A. Well, he averages about four cars, I expect, a day.

Q. And that would be how many chickens, about? A. Fifteen or sixteen thousand chickens.

707 Q. In other words, each inspector goes through approximately sixteen thousand chickens, that is not personally handling each and every one of them, is that correct? A. He disposes of that many.

Q. And if more chickens come in than you have inspectors for, it cannot be inspected that day, and then what happens? A. I do not know as that happens at all.

Q. Is it possible to keep a man waiting for three hours? A. Possible to keep him waiting for inspection?

708 Q. Yes. A. Yes, there have been such cases, yes.

Q. Is it possible to keep a man waiting for five hours for an inspection? A. It is possible but I do not think it has happened like that.

Q. Do you know exactly whether it did happen or didn't?

Mr. Rice: He has already answered that question, your Honor.

The Court: I thought he answered it, but I will let him answer it now to be sure.

Q. Do you know of your own knowledge whether it happened or not? A. In any case?

Q. Yes. A. I do not think it ever happened, a man wait five hours.

Q. Do you inspect personally? A. Yes, sir.

Q. Occasionally? A. Yes.

Q. Do you know what happens in a different market when you are not in that market, when you are in another market? A. Not by absolute knowledge, I wouldn't say I did.

Q. Is it possible that a situation like that might have happened in a place when you weren't there, is that right? A. Yes, sir. 710

Q. That depends on the number of chickens that come in on particular days during particular hours, is that correct? A. As to whether they get prompt service or not?

Q. That is right. A. Yes.

Q. Do you know that it is a fact that the inspection regulations with reference to the Board of Health have been abolished? A. Do I know it?

Q. Yes. A. Yes, sir.

Q. In other words the Board of Health does not require any more inspection than—— 711

Mr. Rice: If your Honor please, I move to strike that out because upon further examination it will be disclosed that this revocation has taken place in the month of September, 1934, after the indictment was filed, and that the revocation took place simultaneously with the taking over of this entire function by the Code Authority.

The Court: Well, you can bring it out from him.

Mr. Heller: Yes, he can bring it out.

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The Court: You can bring it out from this witness when it was abolished.

Mr. Rice: Very well.

Q. You are not employed by the City of New York, are you? A. No, sir.

Q. They have no jurisdiction over you, the Board of Health of the City of New York? A. No, sir.

Q. Have you that table with you showing the particular months for the year 1933 as to the
713 number of chickens destroyed? A. I have copied that off myself for my own information before I left the office; this is my own copy though.

Q. Can I see it? A. Certainly (handing paper to counsel).

Q. Now, is it correct that in the month of October there were 34,626 chickens destroyed, in the year 1933? A. If that is what I have there opposite.

Q. Yes, and is it correct that 56,211——

Mr. Rice: Is that pounds or chickens?

714 Mr. Heller: It is pounds, the same as the other.

The Witness: Pounds.

Q. Yes. Is it correct that in the month of November 56,211 pounds were destroyed? A. Yes.

Q. Is it also correct that in the month of December, 31,189 pounds of chickens were destroyed? A. Yes, sir.

Q. Is it correct that in the month of April, 14,086 chickens were destroyed?

The Court: Pounds or chickens?

Mr. Heller: These are all pounds.

The Witness: If that is the amount I have down there.

Q. Can you compile for us a complete list for the years 1933, 1932 and 1931? A. Absolutely.

Q. Will you do that? A. If it is requested.

Mr. Heller: That is all.

The Court: He has asked you to do it, will you do it?

The Witness: Yes, sure. We have no secrets at all.

The Court: All right.

Redirect examination by Mr. Rice:

Q. May I see this paper that counsel has been using? A. (Witness hands paper to counsel.)

Q. Dr. Ives, in the month of June, 1934, how many pounds of poultry were destroyed? A. June, 1934?

Q. Yes, just in round figures. A. 23,000, practically.

Q. And in June, 1933? A. 9,000.

Q. In other words, about two and a half times as much was destroyed in June, 1934, as in June, 1933? A. Correct.

Q. In July, 1934, how many pounds were destroyed? A. 21,165.

Q. And in July, 1933? A. 8,479.

Mr. Rice: Now we will not go through the rest of the figures. They will be offered in evidence tomorrow.

The Court: I beg your pardon?

Mr. Rice: I say, they will be offered in evidence by defendants' counsel tomor-

row, I understand. He has requested them.

The Court: Whenever he gets them. I don't know whether he is going to offer them; but we will see about it when we get to it.

Q. Dr. Ives, you stated on cross examination that you could not always tell definitely whether or not a chicken had a particular disease until you had opened up the chicken. A. Some dis-
719 eases, yes.

Q. That applies to only some diseases, is that right? A. Yes.

Q. What is true as to most diseases? A. Well, the predominant diseases that we get in the Winter time here are diagnosed easily by simply looking at a bird, and that is the infectious bronchitis, which is the principal one we have to deal with.

Q. Do you have a set of standards as to the symptoms of diseases? A. We do have them in our regulations.

720 Q. Will you tell us what some of them are? A. Well, if a bird has both eyes swollen and closed, exudates coming out of their eyes, or if they are gaping, or singing, as they call it, or sneezing, coughing, those are direct symptoms of bronchitis or some disease of the thorax or lungs. The position in breathing shows that, they stand with their mouths open, gasping for air. Now, those are all symptoms of lung diseases, bronchial diseases.

Q. If a chicken has any one of those symptoms, does the Government under its regulations consider that chicken unfit for human consump-

721

tion? A. Not only if it has only one, two, maybe; if it is just coughing, without any swollen eyes or exudates, or anything, they don't consider that.

Q. Let us take a look at the standards. Will you point to some of the standards as shown by Government's Exhibit 84

Mr. Heller: May I first know whether he knows it without refreshing his recollection before he reads them? He is an expert.

722

The Court: Yes, if you know them.

Mr. Heller: Before you read them, please.

The Witness: What is that?

Mr. Heller: Recite them without reading them. Recite what the regulations are.

The Witness: There are many.

Mr. Rice: May I call counsel's attention to the fact that there are perhaps a dozen of them?

The Court: He wants to know what this witness knows.

723

That is in evidence, is it?

Mr. Rice: Yes, sir.

The Court: That will speak for itself. Let him tell us himself, if he knows.

Mr. Rice: Very well.

The Witness: Sure; I might not think of them.

The Court: Tell us what you know. Maybe you will be helped out a little bit. Tell us what you know.

724 Q. The first one you mentioned was a chicken with two swollen eyes. A. Two swollen eyes, yes.

Q. And what else? And the eyes closed, is that what you said? A. Eyes closed, or if they have exudates coming out.

Q. Suppose it just has those symptoms, two eyes closed and swollen? A. Yes?

Q. Is that classed—— A. That is classed——

Q. (Continuing.) —by your regulations as unfit for human consumption? A. That is classed as unfit for human consumption and destroyed.

725 Q. Do you as a veterinarian consider a chicken unfit for human consumption, a chicken such as that? A. Yes.

Q. And is it generally considered unfit for human consumption? A. Yes.

Q. Tell us some other combination of symptoms which according to your regulations would make the chicken unfit for human consumption? A. Well, if a chicken sits or stands humped up and, on taking hold of it, it is very light, the chances are it would have tuberculosis. That

726 would be considered unfit for food. If it has ruffled feathers, unclean feathers, or if it has a prolaxed rectum, with a greenish exudate, that would be a symptom maybe of cholera, and consider that unfit for food; or if they have dropped abdomen, with tumors or dropsical conditions, as evidenced by the dropped abdomen, they are considered unfit for food. If they have large crops and hard and don't eat, athough the feathers may be ruffled that is considered unfit for food. These symptoms that we consider unfit for food are made simply because as a general thing poultry with these symptoms or these succession of symptoms have some condition on

post-mortem shows they are unfit for food, and that is the reason that we can only go by symptoms as being probably unfit for food.

Q. Do you know of any other practicable way in which you could condemn chickens as unfit for human consumption? A. Post mortem examination is the only one that I know of.

Q. Would that be possible in the live poultry trade? A. No, sir.

Q. Why not? A. You couldn't inspect it dead if it was alive. 728

Q. Who are the class of people who purchase live poultry? A. Well, naturally it is a kosher trade.

Q. Kosher trade, that means they are purchased by orthodox Jews? A. Absolutely.

Q. And the orthodox Jews insist on purchasing live poultry? A. Absolutey correct.

Q. And they won't permit a post mortem before they pick out the chicken? A. Then they would not eat it anyhow.

Q. On cross examination you were asked whether or not the principal purpose of inspection was to ascertain the size of crop of the 729 chicken, what are the purposes of your inspection? A. The purposes of inspection are to eliminate over-crop poultry, and pick out diseased or unhealthy poultry for the trade.

Q. And the latter purpose, is that as important as the first? A. To my mind it is much more important.

Q. And do the inspectors of the Joint Inspection Service pay as much attention to the latter phase of it as the first? A. Equally as much, I think.

730 Q. If a chicken has a broken wing, as Mr. Heller suggested, do you consider that unfit for human consumption? A. Not because it has a broken wing, if that is all it has.

Q. You do not condemn a chicken because it has a broken wing, do you? A. No, not if that is all it has, but it wouldn't be kosher just the same.

Q. That doesn't concern you? A. Absolutely not.

731 Q. As an inspector? A. No, sir.

Q. You do not consider it unfit for human consumption simply because it is non-kosher? A. No, sir.

Mr. Rice: That is all.

Recross examination by Mr. Heller:

Q. Let me ask you one question, Doctor, you say that when a chicken has a disease it is apt to spread to another chicken, is that it? A. Yes, sir.

732 Q. In your inspection you have found diseased chickens and have destroyed them, is that right, is that correct? A. We have found them?

Q. Yes. A. We find them in every car, yes.

Q. Right. How long does it take for this disease to take effect on other chickens that come along with the diseased chickens? A. What particular disease do you refer to?

Q. Well, diseases that you said are apt to spread, what are they? A. Well, in an indication of bronchitis the incubation stage is about seven days.

Q. In other words, the disease that is more apt to spread is a bronchitis condition? A. That is the quickest.

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Q. What other diseases are apt to be spread to other chickens? A. Cholera, diphtheria, tuberculosis.

Q. Now, tuberculosis you have stated before it is impossible to ascertain with certainty until the chicken is opened? A. Yes.

Q. And the same with cholera, and the only thing you can ascertain with certainty is when a chicken has a cold? A. No.

Q. You are not able to ascertain that? A. You can't diagnose absolutely the real trouble, but you can be satisfied it is one of several causes that makes the bird have certain symptoms.

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Q. All right. Let us assume that you have found in one tier about ten chickens with colds; do you destroy those ten chickens? A. Not if they do not have sufficient symptoms.

Q. If they have a slight cold? A. If they simply have running eyes or something like that, we do not destroy them.

Q. If they have running eyes, you pass them as poultry fit for human consumption? A. Absolutely.

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Q. And that cold may develop into a more severe cold, is that correct? A. It probably will if it isn't taken care of.

Q. And if they have that cold it may have spread to other poultry, is that correct? A. Incipient, yes.

Q. At the time of your discovery? A. Yes.

Q. You do not condemn the entire tier, do you? A. No, sir.

Q. You pass it along as fit for human consumption? A. Yes.

736 Q. In spite of the fact that it might have carried the disease to other chickens? A. Yes.

Q. And your inspection is really limited to an average of 200 out of 4,000, is that correct? A. Practically.

Q. And on that basis you pass the entire lot as fit for human consumption, is that correct? A. Well, our certificate does not say that these birds that we pass are fit for human consumption.

737 Q. In other words, your inspection is not for the purpose of ascertaining whether the chickens are fit for human consumption, is it? A. We have a sample inspection only.

Q. In other words, that is all the inspection consists of, a sample inspection, isn't that correct? A. Practically, yes.

Q. And that is uniform in the entire industry, isn't that right? A. Yes.

Q. There are no exceptions made, that is all there is to this inspection, isn't that right, a sample inspection? A. Well, that is all that is required.

738 Mr. Heller: That is all.

The Court: You are going to bring the papers tomorrow that you were requested to——

Mr. Rice: Just one question?

The Court: Surely.

Redirect examination by Mr. Rice:

Q. Dr. Ives, by a sample inspection you mean that the inspector handles only about 200 of the chickens out of a carload of 4,000 chickens, is that right? A. That is right.

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Q. And you also mean that he looks over the rest of the chickens while he is feeling of the 200, is that right? A. He looks them over, yes, he practically sees most of the birds that are in the car.

Mr. Rice: That is all.

Mr. Heller: Except those that are in the back, is that correct?

The Witness: He may see some of those too, if he is looking for them.

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The Court: All right, gentlemen (addressing the jury), do not allow anybody to talk to you about the case, do not discuss it between yourselves, do not form any opinion until it is finally submitted to you, and be here at ten o'clock tomorrow morning.

(Adjourned to Thursday, October 18, 1934, at ten A. M.)

741

Brooklyn, N. Y., October 18, 1934.

(Met pursuant to adjournment at 10 A. M.; present as before.)

Mr. Rice: Our second witness this morning is Mr. Theodore J. Tottis.

The Court: Had you finished with the witness you had on the stand yesterday?

Mr. Rice: Yes.

The Court: There was some question that was asked as to which you made some statement and they objected, and I said that is so, you could ask the witness if

you wanted. You did not ask the witness those questions.

Mr. Rice: I understood Mr. Heller excused Dr. Ives after court adjourned last night, and simply asked him to produce some additional papers.

Mr. Heller: That is right. I have no further questions for him.

The Court: What Mr. Rice asked was with the reference to when the ordinance
743 was abolished, and the doctor didn't answer that. There was a statement made, and I do not know whether that is accepted as the fact or not.

Mr. Rice: This will be proved by the testimony of another witness.

The Court: That is all right; I am not trying the case for you, but if I see anything for either of you, I will suggest it.

THEODORE J. TOTTIS, called as a witness
744 on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. Mr. Tottis, what is your occupation? A. Buyer for the Dexter Food Company.

Q. What is the Dexter Food Company? A. The Dexter Food Company is a poultry commission house, live poultry commission house.

Q. Located at what address? A. 1000 East 149th Street in the Bronx, or in the Port Morris Yards of the New York Central Railroad.

Mr. Heller: Speak a little louder, please.

The Witness: Located in the Port Morris Yards of the New York Central Railroad.

Q. How many commission men are there in the live poultry industry in Metropolitan New York? A. You do not include Newark in Metropolitan New York?

Q. No. A. About twenty-two.

Q. And the Dexter Food Company is one of those twenty-two commission houses? A. Yes, sir. 746

Q. And you are a buyer and solicitor for the Dexter Food Company? A. Yes, sir.

Q. Who are the people that are associated with you in the Dexter Food Company? A. Well, it is a corporation, and our largest stockholders are Mr. J. Posteraro——

Mr. Heller: May I know the purpose of this, as to who the stockholders are? I do not think that is pertinent at all.

The Court: I do not know what the materiality is. 747

Mr. Rice: If your Honor please, I wish to have this witness thoroughly identify himself; I wish to lay a foundation for qualifying him as an expert.

The Court: Well, the fact that he is a stockholder, of course that is of moment. I do not know whether it is of any moment who the other stockholders are.

Mr. Rice: I simply wish to bring out the character of men with whom he is associated.

The Court: All right. If there is anything to it you may bring it out.

748 Q. Just briefly, who are the men associated with you in the Dexter Food Company? A. Mr. J. Posteraro, Mr. Sinte, Mr. DeSandra, Mr. Copeland, Mr. Salthe; they are the principal stockholders.

Q. That is Dr. Royal S. Copeland? A. Yes, sir.

Q. The Dexter Food Company, you have said, is a poultry commission house? A. Yes, sir.

Q. Do you operate also a wholesale slaughter house? A. Yes, sir.

749 Q. Under what name? A. Under the name of Salthe Poultry Company, and the Salthe Poultry Company is owned entirely by Dexter Food Company, and we merely have a separate company on account of the New York State Commission Merchants law that requires us to have that.

Q. What is the business of the Dexter Food Company as a commission house? A. Bringing in live poultry and selling it to slaughter houses, either wholesale or retail.

Q. What is the business of the Salthe Company? A. Slaughtering—selling to retail stores

750 live poultry.

Q. How long have you been in the poultry business? A. Seven years.

Q. Will you trace your experiences in the poultry business from the time that you commenced? A. Well, I started working in the company just handling poultry in the slaughter house to get acquainted with poultry, to know good from bad, and the various qualities; and after going through all the operations in the slaughter house I started working on the commission end of the business, weighing cars, and then going out into the country end to see how

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the poultry was handled in the country, and buying poultry outright and also soliciting it on a commission basis.

Q. That was the work that you commenced doing seven years ago? A. Yes.

Q. Then what did you do? A. I went through the poultry business from the slaughter house operation all the way to the country end of it.

Q. Just review the character of your experience in the various phases of the business. A. In the slaughter house handling poultry, grading it, helping in the killing of it, getting orders, talking to the customers, soliciting their business, keeping them satisfied, weighing out cars, grading cars, setting a price on the poultry in the cars, going out into the country and buying poultry according to its value, and grading poultry out in the country.

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Q. Have you made any studies of the market conditions in the poultry industry? A. Yes, sir.

Q. What studies have you made? A. Relationship between live and dressed poultry market, relationship with the New York poultry markets to out-of-town markets, relationship of top market poultry and the possible selling price compared to the poorer grades of poultry, the effect of selling of poorer grades of poultry on the market price of top grades of poultry.

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Q. What type of material have you studied in connection with that? A. All the Government reports, reports of outlying markets, reports and statistics of the Ernie Barry Company.

Q. Reports covering what subjects, prices—— A. Prices and volume.

Q. Prices and volume? A. Right.

Q. And the relationship of prices and volume to various competitive practices? A. Yes.

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Q. Have you studied the competitive practices in the live poultry industry in New York? A. Yes, sir.

Q. What phases of those competitive practices have you studied? A. Well, about all the phases that there are, that are covered—all the phases of it are covered in our Code, and all those phases have been gone into or studied.

Q. Have you studied the various evil competitive practices——

755 Mr. Heller: I object to the form of the question.

Q. (Continuing.) —in the marketing——

Mr. Heller (continuing): There has been no testimony here about any evil practices, and counsel is asking him did he study evil practices.

The Court: I do not know that the word "evil" has been used. There is some testimony of some practices.

Mr. Rice: I will withdraw the ques-
756 tion. I will ask the question in a different form.

Q. Mr. Tottis, are you familiar with the competitive practices in the live poultry industry in New York? A. Yes, sir.

Q. What are those practices? A. Selling misbranded poultry, selling poultry unfit for human consumption, secret rebates, selling poultry other than straight killing. They are about the——

Q. How about the inspection regulations? A. Well, that is just a law that we have to comply with rather than a practice of the industry, because, before we received the regulations requir-

ing it, why, we just did about what the next man did, regardless of what had happened.

Q. Do you mean that one of the practices in the industry in the past has been to sell uninspected poultry?

Mr. Heller: May we have a date, your Honor? "Past" is too long.

Mr. Rice: The date will be very definitely fixed.

Mr. Heller: Let us have it now so we will know what we are talking about. 758

A. Before we had the Inspection Service, one of the common practices of the industry was the poultry—or the practice in the industry was that the poultry could be loaded or unloaded, regardless of condition, and the result of it was that poultry came into New York, and in order for the shipper to get weight out of his poultry, they had one of two things to do, either to feed it a substance that was heavy as possible, or to plug the poultry; in other words, to stuff the poultry so it would retain as much of the feed as possible. 759

Q. Just one moment before we get into that. I would like to have you discuss the nature of this industry. You have told us that there are about twenty commission men. A. Yes.

Q. Now, commission men sell to whom? A. To wholesale and retail slaughter house operators.

Q. About how many wholesale and retail slaughter house operators are there in New York? A. Strictly wholesale, that don't sell any retail, I don't believe that would run over 50. Then there would be about another hundred and

fifty that also—that also sell both wholesale and retail, and about another hundred and fifty that would be classed as strictly retail, that is, wholesale selling to either a butcher store or chicken dealer, and a retailer selling direct to the consumer.

Q. In other words, there are about 350 wholesale and retail slaughter house operators in New York? A. Approximately.

Q. And the commissionmen sell, the 20 commissionmen sell to those 350 wholesale and re-
761 tail slaughter house operators, is that right? A. To this extent, that there are a few that do not buy from the New York commissionmen, that go out of town to do their buying.

Q. For the most part? A. The largest part.

Q. Is it true that the 20 commissionmen sell to the 350 wholesale and retail slaughter house operators? A. Yes, sir.

Q. Is it the practice in the industry to refer to the slaughter house operators also as market men? A. Yes.

Q. And there are commission men and market
762 men. The market men are wholesale or retail slaughter house operators—— A. Yes.

Q. Who do the market men sell to? A. The retail consumer man sells to the consumer, the housewife that comes in and buys her individual bird. The wholesale market man has two outlets, butchers and chicken dealers. A butcher in our classification is a man that sells both meats and poultry. A chicken dealer is a man that sells poultry exclusively.

Q. Then you have described three categories in New York, first the commission men, about

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20 in number, who sell to the market men, who are about 350 in number? A. That is right.

Q. And the market men in turn sell to two classes of people, namely, the butcher and the retail poultry dealer? A. That is the wholesale market man sells to butchers and retail poultry dealers.

Q. And the retailer? A. And the retailer sells to the consumer.

Q. Are there also chicken stands to whom the market men sell? A. Well, a chicken stand is—

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we class as a chicken dealer—chicken dealers have places, two types of places of business. The majority of them are located in public markets. It will be a room of possibly the size of this that will be divided into a meat counter, another man will have a dairy counter, another one will have a grocery counter, and another one will have a vegetable counter, and they also have a chicken counter, that they refer to as a chicken stand. Then he also may take half of a butcher store and have his stand over on one side and devote himself strictly to the handling of poultry,

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leaving the butcher to handle meats. He devotes himself entirely to chickens or poultry, and therefore we refer to him as a chicken dealer to distinguish him from a butcher because a chicken dealer sells poultry strictly on the volume basis and poultry only, where the other type sells both meat and poultry.

Q. Now, Mr. Tottis, you told us the number of commission men, which is about 20. You have told us the number of market men, which is about 350. Now will you tell us approximately how many butchers and retail poultry dealers and poultry stands there are engaging in the distribution of live poultry? A. I don't believe

anybody could give you an accurate figure on that, but roughly it would run around 5,000 in New York City.

Q. And they in turn sell to the consumers? A. Yes, sir.

Q. Now who consumes live poultry? A. Well, it goes particularly to three classes; by far the largest proportion is the kosher-killed and sold to the Jewish trade. Then the retailers have the most of the balance of the business, which
767 is sold mostly to foreigners, people who have been used to fresh-killed poultry, such as the Italians, and then there is a small percentage of country people from the middle west and the south that cannot get used to dressed poultry and they still buy fresh-killed poultry in New York, but that would run very small percentage.

Q. Now what would you estimate, Mr. Tottis, to be the accurate value of live poultry sold in New York City in normal times, we will say in 1928? A. Well, it ran close—actual value—I should say $60,000,000.

768 Q. Now who do the commission men buy their poultry from, the live poultry? A. The commission men handle poultry on two different bases. He handles—that is his business is divided into two types, a straight commission basis and bought poultry, that is poultry bought on his own account. Commission poultry, he solicits shipments from the shippers throughout the middle west by carload and from nearby States by truck, and then he also handles poultry on his own account that he may buy on either a delivered basis New York or a track basis out in the west.

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Q. That is when the commission man buys on his own account he becomes the owner of the live poultry? A. That's right.

Q. And when he buys on a commission basis what is his relationship? A. Strictly commission broker, an agent. He sells the shipper's poultry, deducts his commission, and sends the balance out to the shipper.

Q. Where are these shippers located? A. Oh, I could give the names of about 35 States where they are located.

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Q. Do you know whether any freight poultry comes from within the State of New York? A. No, none at all.

Q. 100 per cent. of the freight poultry comes from States other than New York? A. That's right.

Q. Now how else does poultry come in besides freight? A. Express and truck.

Q. And about what percentage comes in by express and truck? A. Roughly about 25 per cent. of the total value.

Q. Do you know what percentage of all live poultry marketed in New York comes from outside the State of New York? A. All except, oh, about three or four per cent. of it—that is about 96 or 97 per cent.

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Q. 96 or 97 per cent. of all the poultry comes from outside the State of New York? A. That is right.

Q. And as to the remaining 3 or 4 per cent., do you know approximately what percentage of that is duck, from Long Island? A. Oh, 2 or 3 per cent.

Q. Then about 99 per cent. of all the live chickens come from outside the State of New York, is that right? A. That is right.

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Q. Now will you describe the method of shipment of the live poultry from the 35 States where it comes by freight? A. Well, there is a private car line known as the Palace Poultry Car Company that owns all the live poultry cars that are specially constructed. Their principle is like an ordinary box car with the exception that the outsides have a screening, a heavy mesh screening. In the center of the car, where the two wide box car doors would be, there it is
773 separated from the balance of the car and called the car man's stateroom where he has a collapsible bed for sleeping purposes, and a stove for cooking purposes, and a clothes closet and a dish closet. Now on the bottom of the floor of the car or underneath the bottom is what they call the Possum belly where he stores feed that is used in transit and then there is over his head, a large water tank which he uses for carrying the water to mix with the feed during the trip.

Through the center of the car is an aisle
774 about wide enough for a man to walk through and from the sides of the aisle to the outside of the car it is separated into layers or decks. That aisle separates the car into four quarters and then there are three partitions in each quarter, up and down, which is separated into four sections and each one of those sections have 8 layers giving you 32 decks in each quarter and 128 decks in a car.

Q. Now are these decks stationary? A. Yes.

Q. They cannot be removed? A. Well, in one type of car the floor of every other deck can be removed, with the object that when they run turkeys at Thanksgiving time the decks are only

11½ or 12 inches high, not large enough for a large bird to stand—the cars are constructed to be used for turkeys and geese and in the L. P. T. car the first bird and the 58 layers can be removed so they can be used for turkeys—in other words they become double decks instead of separate decks.

Q. Aside from that the 128 decks are stationary? A. Yes.

Q. Now about how many pounds of poultry can be packed in each deck? A. That is variable with the seasons of the year and the type of poultry being shipped. 776

Q. Well, what is the range? A. It was the range, with the fowl, in the summer time, about 20 or 28 heads and in the winter time 30 or 32 and from the south, possibly as high as—in cold weather and small birds—35 heads per deck.

Q. Now, what would the 35 heads weigh? A. About 140 or 150 pounds.

Q. And what would be the range in pounds? A. Well, the total car in the summer months would be about 14,000 pounds, and in the winter time 20,000 pounds, with 21,000 being very exceptional. 777

Q. Now where the shippers who ship this poultry from the 35 States to the commission men in New York City, where do they obtain the poultry? A. Well, they obtain it from several different sources. For instance, we have a particular shipper that we do business with out in Ohio, he runs a fleet of 20 trucks and they cover half the State of Ohio and half the State of Indiana.

Q. And what is he called? A. He is called a concentrator or shipper. He in turn buys his

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poultry from what is referred to as dealers. He occasionally will go to a farmer if the farmer has a large bunch of poultry, but poultry is one of the cash crops that the farmer raises—poultry, butter, fat and eggs.

Q. Now what do you mean by a cash crop? A. Well, it is something—well, potatoes for instance are one a year crop and the same with any of his grains, practically any crop that he raises he can only harvest once a year and he
779 gets his money once a year, but poultry he raises all the time, and it is the only thing that he can get cash for and for instance if he needs a pair of shoes, tomorrow he knows that the shoes will cost three bucks, and he knows that he can go to the dealer with the chickens, and if the chickens are selling for around 12½ or 13 cents, he will take about 30 pounds of poultry and take it in and get some cash with which to buy his shoes.

Q. Would you say then that the farmer ordinarily uses the money that he receives from the sale of poultry to buy the commodities that he
780 needs? A. The poultry and butter and butter fat is the same to the farmer out there as money may be here, you may go into a bank and draw a check for any money that you need to buy something, and out there that is the same to the farmer, that is, he uses his poultry and his eggs, that is, those are the things that he uses to buy his commodities with. For instance, if he wants to buy some groceries he will go out in the back and catch up maybe fifty pounds of poultry, take that to the grocery store at the crossroads, and the grocer will weigh it up and say, "I am getting twelve cents a pound for

poultry, that is fifty pounds, and will be six dollars. 781 I will give you six dollars credit on the books, and you then can purchase six dollars worth of groceries with it."

Q. Would you say then that the farmer purchases depends to a certain extent upon the volume of his sales of poultry and the value that he receives for those sales? A. Yes, to a large extent.

Q. Very directly? A. Very directly.

Q. Well, now, the poultry is sold to a dealer or concentrator, who in turn sells to the shipper, 782 is that right? A. That is right.

Q. And the shippers sell to the commission men? A. That is right.

Q. Now, the commission men, you have said, are about 20 in number, and you are one of them? A. Yes, sir.

Q. Where do the commission men have their places of business? A. The majority of them are located in West Washington Market in New York City; in fact, there are about 22, and all except 3 of them are located there.

Q. You are one of the 3 that is not located 783 there? A. One of the 3, that is right.

Q. After the poultry arrives at its destination what happens? A. Well, it is offered for sale——

Q. First you had better tell us, Mr. Tottis, at what point does the poultry arrive in the freight cars in New York City or around New York? A. In New York City proper there is a terminal that unloads freight cars at 26th Street in South Brooklyn, in the Lackawanna Railroad Yards. The largest proportion of poultry, I should say 75 per cent. of all the poultry coming into New

784 York City, in the Metropolitan district, arrives at the 60th Street yards of the New York Central Railroad.

Q. That is on Manhattan? A. That is on Manhattan. There is another poultry yard of the New York Central at 149th Street and East River, and there is another terminal of the Lackawanna Railroad called Harlem Transfer, at 135th Street and the Harlem River.

Q. Does that account for all of the terminals in New York? A. No; there are three other ter-
785 minals that bring in poultry on the Jersey side of the Hudson River: The Lackawanna Railroad, the Pennsylvania Railroad and the Central Railroad of New Jersey.

Q. How about the B. & O.? A. They use the —rather the Central of New Jersey use the B. & O. Yards. There is very little poultry hauled over the B. & O., only as far as Bound Brook Junction, and it is handled from there on by the Central Railroad of New Jersey.

Q. Does any poultry arrive at the Erie Ter-
786 minal? A. Yes, the Erie handles some, and the Pennsylvania handles 2, 3; 4 cars a week.

Q. The principal terminals are the New York Central Terminal on Manhattan and the 4 railroad terminals that you have mentioned in New Jersey, are they not? A. That is right.

Q. What happens when a freight car of poultry arrives at these terminals? A. When a freight car arrives the commission company to whom it is consigned offers it for sale to the buyers. The buyers all start congregating in the yards around 7 o'clock in the morning, inspect the poultry, that is, look at it, see if it satisfies them, and then they try to dicker with the salesmen to

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find out what the selling price is, and if they can buy it at a price that they think is a reasonable price, why, they place an order for that poultry; in other words, they buy it. From then on it is up to the commission man to deliver the poultry to them.

Q. Before the poultry is unloaded is there any inspection made? A. Yes; that is the commission man's job. After he sells the poultry he has to request the Joint Inspection Service for an inspection of that poultry, which is done by making out a regular application upon a card, putting on the car number, and giving that to the Inspection Service. Then they send an inspector in to inspect the car both for crop content, type of feed fed, and health.

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Q. That inspection is made by the Joint Inspection Service operated by the Bureau of Agricultural Economics, is it not? A. That is right.

Q. Are you familiar with that inspection service? A. Yes, sir.

Q. Is that inspection service made at the terminals? A. Yes, sir.

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Q. Will you describe the nature of that inspection service? A. Well, at eight o'clock every morning the Inspection Service calls up and wants to know if we have any poultry to be inspected, and at what time to send the inspectors there, and our usual procedure is to get our cars started around ten o'clock, and we arrange with them to have the inspectors sent there at ten o'clock to make the inspection. The inspector goes into the car, and if the car is a normal car, it will take about 20 minutes, if it hasn't been overfed, or if the car is healthy, he passes the car for inspection.

790 At our particular terminal, after the poultry is unloaded, we use our own house men to grade that poultry, that is, to grade out what we consider undesirable or unfit poultry, and every chicken coming out of the car is handled. Anything that we consider unfit is put in a separate container or battery until the car is finished. If it goes to outside buyers, they grade or cull through the coops, and anything that they consider unfit is rejected by them. Then that re-
791 jected poultry is held until the car is completely unloaded. The inspector looks at the poultry, and anything that he considers unfit for human consumption in his opinion he destroys, and we have to denature that with a disinfectant.

Q. Are you required to keep disinfectant on your premises for that purpose? A. He won't inspect the car unless there is a can of disinfectant at the car door in a barrel in which the destroyed poultry is put.

Q. Do the New York Health Department Rules require that every poultry dealer keep a can of
792 disinfectant on the premises? A. To the best of my knowledge——

Mr. Heller: That is objected to.

Mr. Rice: I withdraw the question.

Q. Are you familiar with the inspection of poultry since the Live Poultry Code went into effect? A. Yes, sir.

Q. Has it differed in any respect since the Code went into effect? A. I think it is more drastic.

Q. Will you describe the difference? A. Well, previously a lot of poultry that we considered

unfit for human consumption was left largely to our discretion. 793

Q. To your discretion as commission men? A. That is right.

Q. As the seller? A. That is right. The way it works out at the present time—well, let me express it this way. Previously we have an expression in the trade, if there is a scarce market in New York, everything is good poultry, and if there is a sloppy market, that is, an oversupply, nothing is good poultry. In other words, 794
if there was a temporary scarcity of poultry we would insist to the buyer that he take everything that had a head on it, or we would cancel his order, and if there was a sloppy market, why, he was fairly fastidious in the way he culled his poultry through. But the way it has worked out recently, even on a top market, if we try to make a gentleman take poultry the way we think it should be taken on a tight market, he immediately starts yelling he is going to get the Code Supervisor, the investigator, up there, and he is going to do half a dozen other things, and we 795
just have to take back stuff that ordinarily formerly we could fairly well insist on his taking. Then, in our own poultry, when it comes to have the cars inspected, the inspectors are much more drastic in the poultry that they kill off that they consider has any sort of infectious disease.

Q. Now, if during an inspection of a carload of poultry it is discovered that there are a few chickens with infectious diseases, what happens? A. The car is marked sick, and the inspector stays at the car door as the—well, I can best explain it this way: We had a car three weeks ago yesterday that was marked sick by the In-

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spection Service. The car man in the morning before the inspector arrived, and with our help, we didn't want the inspector to mark the car sick, so we culled through the car and killed off 247 heads that we thought were the worst, and we destroyed them and took them over to the dump, and the inspector came in at ten o'clock. He went through the car and he apparently had seen some we had missed and he destroyed 82 heads. And then as the car was unloaded he
797 separated out 825 pounds that he had marked for immediate slaughter. And that poultry had to be sold immediately, and we couldn't carry it over, had to sell it that very morning, and the balance of the poultry was healthy poultry, and we took it into the house, and we had no trouble with it. The Board of Health inspector got wind of it, because he was around to our place the following morning, went through the entire house, and he did not find a sick chicken in the place.

Q. When a few diseased chickens are found in a carload by the inspector, then is a more thor-
798 ough inspection made? A. Yes, then he gives—well—if the car is healthy, he would give it what would ordinarily amount to a sample inspection, but if there is any sign of sickness in the car, then it is immediately throughly inspected.

Q. What do you mean by a thorough inspection? A. He practically handles every bird himself, or looks at every bird coming out of the car.

Q. After the poultry is inspected in the freight cars, what happens to it? A. It is unloaded into the buyer's truck and then the buyer's driver culls through for poultry that he considers unfit for human consumption, poultry that he cannot sell or is not allowed to sell, and he rejects

that poultry. Then the balance of the poultry is loaded into the buyer's truck and he takes it home to his own market.

Q. As to the poultry arriving at the New Jersey terminals, how is that poultry transported from the terminals to the buyers? A. About 80 per cent. of it is loaded directly onto the buyer's truck.

Q. When you say "buyer's truck," do you mean market man's truck? A. Market man's truck. 800

Q. The man who buys from the commission man? A. That is right. For instance, he may go to 60th Street and go to a commission house, and the commission man may say, "I have a nice car over in the Jersey road," and he will tell him where the poultry is out of, and the man will take the truck over to the Jersey road and load the poultry on his truck there.

Q. You say about 80 per cent. of the poultry arriving at the Jersey terminals is called for by the buyer in his own truck? A. That is right.

Q. And is it transmitted directly from the freight car into the buyer's truck? A. Yes. 801

Q. Then what happens to it? A. Then he comes back to New York and he may load some more stuff on his truck at the market, or the other New York terminals.

Q. What do you mean by market, West Washington Market? A. West Washington Market.

Q. And then he goes to his market? A. Yes.

Q. Brooklyn, the Bronx, Queens? A. I would like to explain that. The commission man operates the carload poultry at the railroad terminals, but at the West Washington Market they have stands or stalls or stores, whichever way you

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want to call them, where the express and truck poultry is handled, so when he finishes loading there at the Jersey road, he may stop at the stand or commission man's stand, down at West Washington Market, he may put a few more coops on the truck, and then go back to his place of business.

Q. But you say that 80 per cent. is loaded directly from the freight cars onto the buyer's truck and carried in from the New Jersey terminal into New York? A. That is right.

803 Q. Now, what happens to the remaining 20 per cent. arriving at the Jersey terminals? A. Oh, about 5 per cent. of it is sold to buyers located in Jersey.

Q. What happens to the remaining 15 per cent.? A. And the balance,—I would best explain it by an example. If I have a truck that arrives in the 60th Stret Market, I may load 20 coops there, and I decide I want to load 10 coops over on the Jersey road, but I have 2 cars to load there at the one time, I will call a commission man to have the poultry put on his truck and brought into West Washington Market and I will later take my truck down to West Washington Market to transfer the load. Well, some of that stuff is transferred out of that 15 per cent. About half of it may be transferred that way.

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Q. That is, may be transferred directly from the commission man's truck to the buyer? A. To my truck by the buyer's truck.

Q. At West Washington Market? A. At West Washington Market, and it may run about 8 or 10 per cent. that may not be sold at the railroad that is loaded onto the commission man's truck

805

or trucking company, which he buys, and brought to his stand, and put on his stand for slaughter whenever they can dispose of it.

Q. Let us see if we have that clear, 80 per cent. is loaded from the New Jersey terminal freight cars directly to the buyer's truck and taken by the buyer to his market in New York? A. Yes, sir.

Q. Five per cent. is sold to the New Jersey buyers? A. Buyers.

806

Q. Fifteen per cent. is taken to the commission man's stand in West Washington Market? A. Half of it. Half of it may be transferred.

Q. Just a moment. Let us take it step by step. Fifteen per cent. is taken to West Washington Market, is that right? A. That is right.

Q. And about half of that 15 per cent. is simply transferred from the commission man's truck to the buyer's truck in West Washington Market and then taken by the buyer to a market in New York, is that correct? A. That is right.

807

Q. And the remaining half of that 15 per cent. is transferred onto the commission man's stand at West Washington Market? A. Until he can dispose of it, yes.

Q. How about the poultry arriving at the New York Central Terminal, how is that transmitted to the buyers? A. As much as the commission man can sell is loaded directly onto a buyer's truck and what he is unable to sell is put on the commission man's truck, or a trucking company's truck, taken down to a stand at West Washington Market and held there until he can sell it.

Q. What percentage did you say is called for by the buyer in his own truck at the New York Central Terminal? A. Well, that depends upon

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your market conditions, which vary from time to time. There will be days when 100 per cent. of it at the terminal is picked up by the buyer, and there are days when it will run as low as 80 per cent., and the balance may have to be sent down to West Washington Market.

Q. Then it ranges between 80 and 100 per cent.? A. Yes, sir.

Q. The balance is brought down to West Washington Market, and what is done with it there?

809 A. Sold.

Q. Is part of it immediately transferred to the buyer's truck at West Washington Market? A. That is done, and the buyer may have his stuff ordered down to West Washington Market and have it picked up down there on his truck, and the balance, some of it, is sold the same day, some of it may possibly be carried over until the following day, but the common practice is to try to dispose of it even at a sacrifice price to move it that very same day.

Q. Is poultry considered to be a perishable

810 commodity? A. I think it is considered highly perishable.

Q. Why? A. Well, just this, it is live stock, requires feeding, it is so susceptible to disease, to contagious disease, which will travel through it so very fast, that the railroads in particular consider it more highly—about the most highly perishable commodity that they handle.

Q. What is the consequence of this perishability? A. It receives very nice, fast movement from start to finish. Railroads put it on their fast trains. They will make stops of very fast trains to pick up live poultry where they pass up ordinary live stock. At the time it arrives

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in New York, oh, I would say 50, 60 per cent. of that poultry is slaughtered in the slaughter houses the very next day. They want to keep it on hand as short a time as possible and handle it as fast as they can.

Q. About how many hours expire from the time of the arrival of the poultry at the terminals, railroad terminals, to the time that it is slaughtered at the wholesale and retail slaughter house markets? A. Poultry arrives in the terminal in New York, the commission man is anxious to sell as much of it as possible, and not 812
carry it over in cars from day to day, and from the time it arrives in New York, there is a freight run that gets into 60th Street that handles the bulk of it at 6 o'clock at night, and another one gets in about 5 or 6 o'clock in the morning, and that stuff is sold and delivered to the buyers' trucks, the bulk of it, by noontime, and it is usually slaughtered by the following morning by the slaughter house operator.

Q. Would you say that more than 24 hours ordinarily expires from the time that the poultry arrives at the railroad terminal until it is slaughtered? 813
A. The bulk of it.

Q. More than 50 per cent.? A. More than 50 per cent. goes out within 24 hours.

Q. And is slaughtered? A. Is slaughtered within 24 hours.

Q. Now, does the slaughter house operator sell the poultry to the retail poultry dealer or butcher before or after he slaughters it? A. Well, he sells it—I will express it this way: there are two types of butchers; one insists on going to the market himself and picking out the poultry that he wants and the other will have confidence in

his slaughter house operator and will merely call up on the telephone and ask him to deliver him a certain size order. Where the butcher goes into the market, he picks out or points out his poultry before it is slaughtered and while it is still alive, but its weight, he is charged the price —rather at the weight after it has been slaughtered. In other words, he pays for it on the slaughter weight, but he picks it out while it is still alive, but if he has picked out something that
815 is still alive and then turns out to be unfit, it is his privilege to naturally reject that.

Q. But the sale is consummated prior to the slaughtering of the poultry? A. That is right.

Q. Now, what day of the week is most of the business done? A. Thursday.

Q. And about what percentage of the live poultry is sold on Thursday? A. About 60 per cent.

Q. Why is that? A. Well, a large proportion goes to the Jewish trade and the Jewish Sabbath starts at sundown on Friday and the poultry has to be in the house and cleaned and cooked before
816 sundown on Saturday—before Friday, rather—and it is consumed on Friday night, Saturday night, and Sunday.

Q. Well, why must it be cooked before sundown on Friday? A. On account of the Jewish orthodox laws, the Jewish religion.

Q. The Jewish dietary laws required that? A. I believe so.

Q. Now, do you know when the inspection of live poultry in New York commenced? A. 1926.

Q. And prior to that time there was no inspection of live poultry? A. No. There was what they called a buyer's inspection, but it had no official weight and it did not mean a thing.

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It was merely a group of inspectors paid by the buyers themselves that were supposed to judge whether the poultry was over-cropped or not, but it did not mean anything and eventually petered out.

Q. The Joint Inspection Service came into being in 1926? A. That's right.

Q. And it has operated since that time? A. Since that time, that is right.

Q. Now, will you describe the conditions in the marketing of live poultry prior to the time that the Joint Inspection Service commenced operating in 1926?

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Mr. Heller: I object to that question as entirely too remote to be involved in this case, with no relevancy at all as to what happened before 1926. He may as well start with 1900.

The Court: I don't know that that is so, they want to show the change, I suppose. I will let it go in.

Mr. Heller: Exception.

819

Mr. Rice: It is our purpose, your Honor, to show what happens when there is no inspection.

The Court: I have overruled the objection, Mr. Rice.

Q. Will you describe the conditions existing in the poultry industry prior to the inspection service in 1926? A. Their object was to try and unload poultry with such a weight——

Mr. Heller: I object to what the object was, let him describe conditions.

The Court: That's right.

820 The Witness: The poultry, instead of being fed as it is now, with a modern type of feed——

Q. Speak up, please. A. To get weight into the car, poultry was fed everything imaginable, and there were two ways of doing that, they would use something that had a heavy weight for volume or they would try to constipate the poultry so that the feed would not pass through it.

Q. And what was that called? A. Plugging.

821 Q. And how was that done? A. Well, they feed it a wheat with very little moisture or ground wheat with coarse flour mixed with it. It was a dough consistency, or they would make little pellets of dough and feed it to the poultry, or any other method to gain weight, one would feed to sand gravel and in a few cases they actually used cement, anything that would be heavy and also be very slow in going through the bird's digestive system.

Q. Now, who did this? A. The car man, the shipper, in other words.

822 Q. And when, before the morning of unloading? A. Yes, sir.

Q. Now, that is just before he sold it to the commission man? A. That's right, or to the buyer.

Q. Now, what was the type of poultry that was brought into New York at that time under those conditions? A. I don't get what you mean by "type of poultry."

Q. Well, was the poultry brought in at that time as good as the poultry today?

Mr. Heller: I object to the form of the question.

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The Court: He can tell us what the conditions were.

Mr. Heller: He has already stated that, your Honor.

The Court: Yes.

Q. Well, what kind of poultry was sent into New York prior to 1926? A. Anything with a head on it.

Q. Will you describe that a little more fully? A. Anything that the western dressing plant could not dress out, and which would show good quality or that was unfit for human consumption that they had bought unknowingly and had gotten it into the poultry plant, rather than dress it out and take a loss, they put it in the live cars and rode it to New York.

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Q. And which you say that there was a demand for inferior poultry and unfit poultry in New York?

Mr. Heller: I object to the form of the question.

The Court: He knows whether they could sell it or not.

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Mr. Heller: He may state what the quality of the poultry that was sold in New York was.

The Court: He told us what kind they were bringing in, now he can say whether it was sold.

Mr. Rice: I will withdraw the question.

Q. What were the marketing conditions in the live poultry industry at that time? A. Well, that type of poultry coming in created demand for cheap poultry because there was certain poor sections of the city that tried to buy poultry as

cheap as possible. The average live poultry brought into New York is kosher-killed, and that is sold with the feathers on and it is very hard for a person who does not know poultry to be able to tell an ordinary bird from a poor bird. Most of the people can tell a very good bird from an ordinary bird, but it is harder to tell a poor grade of poultry and there is a certain demand for that cheap poultry in cheap neighborhoods, something that they can sell at very
827 low price and the result of that poor poultry coming in was they had a tendency to depress the value of the good poultry, because good poultry that was selling at a high price had to meet the competition and the tendency is for the range to narrow and that usually means that the good poultry price comes down.

Q. Now, would you say that these conditions continued the same way after the Joint Inspection Service went into operation? A. They improved.

Q. They improved somewhat, did they? A. Yes, sir.

828 Q. But not entirely? A. Not entirely because——

Mr. Heller: I object to the because.

Mr. Rice: If your Honor please, this witness is testifying as an expert.

The Court: He is giving opinion evidence; this isn't fact, this is opinion.

Mr. Rice: Very well; proceed.

The Court: Go ahead.

Mr. Heller: I understand then it is to be connected up with the facts?

The Court: Yes, but he has already given us facts; now he is just giving his

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opinion, as a result of those facts something has happened; this is his opinion pure and simple.

A. Those conditions have been remedied somewhat, but they still exist.

Q. What are the factors that have continued the existence of those practices? A. Well, the Inspection Service, to my way of thinking, should be a little stricter. Poultry coming in uninspected has a tendency to continue that practice. And one of the worst conditions we 830
have is that poultry, instead of being killed straight or sold straight, is allowed to be graded, and that as—the poultry, if it had been killed straight, that poultry would be forced to be kept out in the country and not allowed to come into New York, but by grading the poultry, a certain percentage of that poultry is available, and there is a demand created for it because it is there.

Q. Has the inspection become more rigid since the Live Poultry Code became effective? A. Yes, it has. 831

Q. You are familiar with the general provisions of the Live Poultry Code, are you not? A. Yes, sir.

Q. You are familiar with the provisions of the Code permitting the sale of poultry unfit for human consumption? A. Yes, sir.

Q. How would you describe poultry unfit for human consumption? A. Well, the average person——

Mr. Heller: I object to that; there is no foundation for this testimony, as yet.

The Court: He has shown a very wide

experience. He can give us his opinion as to what is unfit for human consumption.

Mr. Heller: Are we to be charged with what is unfit in another source, in other places?

The Court: I do not know, but he is laying the groundwork, trying to show that there is some interstate proposition involved here. This isn't directed to the particular acts that you have committed, this is proof that is offered now to show
833 that this is Interstate Commerce, and then to show the effect of these various things. Unless they can do that, they cannot charge you with a crime.

Mr. Heller: Do I understand that we are bound by what takes place all over the country?

The Court: No, but they have got to show that this is something that affects interstate commerce, otherwise it wouldn't be an offense. Therefore, they must show that first; after they do show that, then
834 they can show whether these individual acts of yours were connected with these practices, but they have to show first whether it involves interstate commerce.

Mr. Heller: I except to this line of testimony.

The Court: All right, it is only an opinion he is giving now as an expert.

Q. You have examined a great many birds? A. Yes, sir, a great many.

Q. In the past seven years? A. Yes, sir.

Q. And you are familiar with poultry diseases? A. Yes, [illegible], the common diseases.

Q. The common diseases——

The Court: What do you call common diseases?

The Witness: Roup, infectious bronchitis, tumors, dropsy, limber-necks, water-bellies——

Q. How about avian tuberculosis? A. Yes, sir.

Q. You are familiar with that? A. Yes, sir; in an advanced stage.

Q. Have you had any training in detecting these more common poultry diseases? I do not mean have you gone to school? A. No, I haven't gone to school, but I have received training in it. At one time we had a man working in our place for five years, that was a veterinarian, and during my early period up there, why, we performed quite a few post-mortems on different types of chicken diseases, so that I was able readily to recognize them, that is, in a fairly advanced stage.

Q. What is a gapper? A. It is one of the advanced stages of infectious bronchitis, when the wind-pipe is getting clogged and the bird has got a great deal of trouble breathing, and he starts opening his mouth and gapping for air.

Q. What are the other symptoms of a gapper? A. That is the one, that is the sole one that you can pick out without any chance of making a mistake. You can look at a carload of poultry from 25 to 50 feet away and immediately spot a gapper, by just that one action.

Q. Is a gapper considered unfit for human consumption in the poultry trade? A. Yes, sir.

Q. How about poultry with these other diseases that you have mentioned? A. With roup it gets immensely swollen eyes, so it is very

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readily seen even from a distance. But a tubercular bird or a limber-neck is very readily distinguished at a distance. Its neck is doubled over, it is down on the ground, and it cannot straighten itself up. A tumor you cannot see, but you can feel it in poultry. You cannot as a rule see them at a distance. You must feel the bird for the tumor, and what we refer to as water-belly must be actually handled to be recognized or identified.

839 Q. Are all of these classes unfit for human consumption? A. Yes, sir.

Q. What is a water-belly? A. Well, it is a water cyst that forms in the ovaries, and it is usually caused by excessive strain of laying eggs.

Q. Is a poultry with that defect unfit for human consumption? A. Absolutely. If you open that bird up it will just smell to the heavens.

Q. Is the expression "cull" used in the live poultry trade? A. Yes.

Q. What does it generally mean? A. Poultry unfit for human consumption, that is generally

840 referred to as a cull.

Q. Are there also chickens which are inferior or undesirable that are not considered culls? A. Yes, a large percentage.

Q. What is the distinction between the two? A. It is usually referred to in the trade as a second.

Q. A second? A. Or an undesirable, a second is the common term.

Q. Are they fit for human consumption? A. Absolutely.

Q. What is a second? Describe it to us. A. Well, it is a bird that may have a poorer breast, a little leaner breast, maybe suffering

from malnutrition, it may have a crooked breast, it may have possibly a broken leg or a broken wing.

Q. Prior to the time that the Live Poultry Code became effective are you familiar with the practice of giving weight allowance in lieu of culls? A. Yes, sir.

Q. Just what was that practice?

Mr. Heller: Objected to as not part of this indictment.

The Court: There is no charge of that kind here. 842

Mr. Rice: We are endeavoring to show the practice——

The Court: I know, but whether you gave allowances or not doesn't mean anything, does it?

Mr. Rice: We are simply endeavoring to show that the practice prior to the time of the Code was to pass on the culls to the buyers and give a weight allowance in lieu thereof.

The Court: I understand that.

Mr. Rice: And we are endeavoring to show that the Code provision which prohibits weight allowance in lieu of culls, that the Code provision prohibits the sale of diseased poultry and has eliminated that practice. 843

The Court: Go ahead if that is it.

Q. What was that practice prior to the time of the Live Poultry Code? A. It varied according to the quality of the car. In the average car they gave a pound to a coop in lieu of culling the poultry. In poorer cars it ran as high as

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3 and 5 pounds weight allowance per coop. In other words, the buyer could not put his hand into the coop and pick out the culls or the sick poultry; he had to take the straight run, and if he loaded 10 coops on his car, then they would deduct 50 pounds of weight, or give him 50 pounds weight allowance for the culls.

Q. And the culls were delivered to the buyer along with good poultry? A. That is right.

Q. And were the culls ultimately sold? A. They were.

845 Q. Was that the practice in the trade? A. Yes.

Q. Even though the poultry was diseased and classified as unfit for human consumption it was sold? A. Yes, sir.

Q. I mean sold to the consumer? A. Sold to the consumer, yes.

Q. How does the practice differ since the Live Poultry Code came into effect? A. One of the provisions of the Code——

Mr. Heller: I object to the provisions
846 of the Code. How does it differ, was the question?

The Court: Yes, tell us how the practice differs.

Q. You are familiar with the provision of the Code prohibiting the weight allowance in lieu of culls? A. Today we do not give a weight allowance in lieu of culls. We give a man the privilege to cull his poultry, and anything that we mutually consider unfit, rather, he is not compelled to take.

Q. Does he take it? A. No.

Q. What happens to the culls or unfit poultry now? A. It is destroyed at the car door.

Q. And disinfected? A. Yes. 7

Q. Mr. Tottis, what is the effect upon the shipment of live poultry of selling culls or poultry unfit for human consumption in the New York market?

Mr. Heller: May we have the period of time when, at present or when?

Q. Generally, what is the economic effect upon the shipment of poultry of the selling of culls in the New York market? 848

Mr. Heller: I object to it, first, on the ground that it is too general, and, secondly, he has not been qualified as to competency.

The Court: He has had a wide experience in this. He can tell what the effect on this trade is.

Mr. Heller: I haven't seen any figures yet, your Honor, of percentages that come in that were culls or anything else. This man gives a general opinion as to the effect of culls coming in. 849

The Court: He said before that they gave allowances but did not cull and now they do cull. It is his opinion, of course.

Q. Now, prior to the time that the Code went into effect approximately what percentage of live poultry shipped into New York consisted of poultry unfit for human consumption? A. In my opinion it ran approximately around 2 per cent.

Q. And was practically all of that sold to the consumer? A. Yes, sir.

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Q. Are you familiar with the effect of shipments of live poultry from other States, and the practice of selling culls in the New York market? A. Yes, sir.

Q. You have made a study of that? A. I have.

Q. What is the effect? A. I will start this way; take a neighborhood where there are a group of chicken stores. One of those dealers will go to his market and buy a lot of this
851 poultry from everywhere from 3 to 5 to 7 cents a pound when the market price may be 17 cents. He will take it back to his store and paste up a big sign on a window saying poultry 12 or 15 cents a pound. Immediately, all his competitors go down to the market where they kill poultry and they want to buy poultry at a price that they can compete with that price at. That creates a demand for that. We have to be in a position where we can buy cheap poultry so that we can sell it to our trade to compete with that type of price. It has a tendency to make us a little weaker, that is to go out and try to buy
852 cheaper poultry so that we can compete with that cheap price and that attracts a lot of rejects from these western dressing stations. The result is cars have been coming into New York that are practically culls, just on the borderline—solid carloads where they pick up junk from these other cities and bring it in to New York to satisfy that type of trade and that has a tendency to knock the price structure down for the top price poultry.

Q. Do you know whether it was a practice on the part of shippers prior to the Code to send that inferior and sick poultry to the New York market? A. Absolutely, yes. New York

was the dumping ground for all the junky poultry all over the country.

Q. Did it differ from other larger cities of the country? A. Yes, decidedly.

Q. Why? A. Because there was a demand created for it and there was no effort made to keep that poultry out of the New York market. For instance, take a town like Chicago. Chicago has what is called a Poultry Board of Trade, and every carload or truck load of poultry that comes in there, when it arrives at the door of 854
the receiver, he must request inspectors or graders from the Poultry Board of Trade, and he has no choice of who these inspectors are, and they come out and they grade the poultry and the poultry is sold according to their grading. Theirs is the official grading for Chicago. And they grade it both for size and for quality, and if poultry is unfit, in their opinion, it is either returned to the shipper to take back to the country or destroyed on the spot. All over your other outlying markets, Cleveland, Toledo, Columbus, Pittsburgh, all of the poor poultry is returned to the shipper and destroyed. They 855
have a very strong ordinance in the town and trade practices that won't take in that type of poultry, and the result is that the poultry—they may accumulate a few thousand or 1500 pounds of this junky poultry in Chicago, St. Louis or any one of those towns, and they load it into a live car and roll it into New York and dispose of it there because there is a demand for it.

Q. Was that actually done regularly prior to the Code? A. Absolutely.

The Court: I see a good many people coming in. I want to call your attention

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to the fact that if any of them are your witnesses——

Mr. Heller: I have not subpoenaed them as yet.

The Court: I just call attention to it, that is all.

Q. Do you know what the practices of the packers were prior to the Code? A. They were also in the same position, taking their dressing station rejects, loading them into live cars and
857 sending them to New York, but that is one type of poultry. The packers have apparently reformed in the last two months to a remarkable degree and they are shipping in real good quality of poultry at the present time.

Q. Has the character of the interstate shipments of poultry improved since the Code went into effect? A. I think it has.

Q. Appreciably? A. I think so.

Q. Do you know whether there is a difference between the demand for culls in New York from that in Newark, New Jersey? A. Yes, New York
858 will handle a lot poorer types of poultry that they could not dispose of over in Newark.

Q. Can you illustrate that by any examples? A. Merely this, that Newark handles larger top poultry or—a larger percentage of it is top market poultry compared to the percentage of top market poultry in New York. While the same shippers will ship to the New York market that ship to the Newark market, the Newark market receives a much higher percentage of top market poultry. The buyers out there grade their poultry very closely.

Q. Do you know of any instance, Mr. Tottis, where poor poultry has been rejected in Newark

and later received in New York? A. Yes, I know of instances.

Q. Do you know who the commission houses are that handle poultry at Philadelphia? A. Yes, there is Eagle Poultry Company, Albert & Warms, Albert Levitt, Farmers Produce, Risser & Rabinowitz.

Q. Are there just those four commission houses in Philadelphia? A. No, there are a few more. There is a firm by the name of Handy. There are about a half dozen there.

860

Q. Do you know what the practice of commission houses in Philadelphia is in regard to shipping poultry into New York or rather what the practice has been in the past? A. Well, they receive their poultry and they sell to a certain extent on grade. They grade out the poorer quality of poultry and they have been in the habit of placing the poultry into the New York market.

Q. In your opinion, Mr. Tottis, would there be substantially less unfit poultry shipped into New York market from other States if the sale of unfit poultry were prohibited in New York? A. 861 Absolutely.

Q. And would there be a substantial increase in the amount of fit poultry sent to the New York market? A. Absolutely, because of a lot of this unfit poultry in my opinion the trade is swinging away from live poultry. Our consumption of live poultry in the last four or five years has dropped off about 25,000,000 pounds, and it was not due solely to economic conditions, because the dressed poultry market increased its sales by about the same equivalent, around 23,000,000 or 25,000,000 pounds, so the tendency

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seems to be away from live poultry to dressed poultry on account of that.

Q. To what extent would the consumption of live poultry increase the sale of poultry unfit for human consumption could be prevented? A. I believe we would get back about 20 per cent. of the business that has been lost as a result of it.

Q. That is, by preventing the sale of the 2 per cent. culls, it is your opinion that the sale of all live poultry in New York would increase about 20 per cent.? A. I think so.

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Q. What is that opinion based on? A. People that I have spoken to, that have bought this fresh-killed poultry and have been stuck with a lot of these undesirable or culled poultry that was sold to them because they did not know much about poultry. They decided that they would rather buy poultry that they could see actually dressed instead of taking something blind.

Q. Well, now, is it easy for a consumer to determine that a chicken is unfit for human consumption? A. No, it is not the easiest thing in the world at all, not after it is slaughtered.

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Q. Do you know what the relationship between the market prices in New York City are to the prices in other marketing centers in the United States? A. There is a fairly close relationship. For instance, the differential between the New York and Chicago market will be approximately 2½ cents.

Q. Which is higher? A. Yes, sir.

Q. Now, what sets the market price for poultry in the various markets throughout the United States? A. The New York market.

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Q. The New York market sets the price for other markets? A. That is right.

Q. Now, how do the differentials between the Chicago market and the New York market—you say that is 2½ cents? A. Yes.

Q. What accounts for that difference? A. The diffrence in the freight charges from Chicago to New York, plus the cost of handling at the New York end.

Q. And in what direction does poultry move over the country? A. From west to east.

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Q. Any other direction? A. North; that is, from the New England States toward New York, and from the Middle Atlantic States toward New York, and the balance of it moves from the West to the East.

Q. How about in the Winter time? A. In the Winter time it comes from the South up to the North.

Q. And therefore the prices in New York are the highest in the United States? A. Yes, sir; the New York market is always higher than any other market.

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Q. And the prices in other centers represent the differential between the New York price represented by the difference in freight? A. And any variation from that would be very temporary, lasting probably a day or two. There is a difference in handling freight charges between Chicago and New York of 2½ cents, so if New York today has a 17-cent market, Chicago should be 14. If Chicago should go to 14 and poultry is coming from the West, east, it is more profitable to continue the car on to New York to get the extra 2½ cents. If the Chicago market, however, should go to 15 cents, then of course it

would be more profitable to stop the car at Chicago. If they should have a glut, for instance, of poultry in another city, let us take St. Louis, for example, why, then, if they had a glut there, one of the dealers would immediately make up a car and send it to New York. That is the way that they keep the balance.

Q. Now, if the competitive practices demoralize the market price in New York City, does that have any effect on market prices in marketing centers throughout the United States?

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Mr. Heller: I object unless the practice is specified.

The Court: If he knows when it is; that is the point. The way he has expressed himself heretofore, he knows the conditions, and he has said about the changes. If there are any reasons for changes other than those, I don't know about it.

Mr. Heller: He simply said there was a difference in freight charges.

The Court: He did that, and he also said that there was a difference in demand. He said that if a certain market was overloaded it would change the effect.

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Q. Now, if the competitive practices in New York City have an effect, the effect of demoralizing the market prices in New York City, does that have any effect on the market prices in other marketing centers throughout the United States? A. Naturally, it will bring it down to about the same relationship, which happens to be the differential between these other cities.

Q. Does it have any effect on the prices received by interstate shippers? A. Naturally, be-

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cause there is also a fixed ratio between the market prices and the farmer, that is, what the farmer receives for his poultry, or the handler, that is, should it be the handler, on the other end, whether it is a commission man or some other dealer in another city or the farmer or the shipper.

Q. Well, does it have the same effect on the farmer as it has on the shipper? A. Yes, sir.

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Q. That is, if the price structure in New York City is demoralized, that reduces the price that the interstate shipper receives for his poultry and it reduces correspondingly the price that the farmer receives for the poultry that he sells? A. That is right.

Q. And is that readily reflected? A. It would take about 24 hours. The market is made in New York City at about half past nine in the morning, and by noontime they would be knocking the price down to the farmer out in the country, on the same day.

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Q. Now, what effect, in your opinion, does the sale of culls—and by the expression "culls" I mean poultry unfit for human consumption—what effect does the sale of culls have upon the prices received by the interstate shippers? A. I thought that I explained that before. It merely brings down the value of the good poultry because you have to sell high-priced poultry in competition to cheap poultry, and it has a tendency to narrow the range and bring the price of good poultry down, and that is reflected all the way back to the shipper in the lowering of market prices.

Q. Does it reduce the aggregate value received for all of the poultry? A. Yes.

874 Q. Does it reduce it out of proportion to the amount of culls sold? A. Yes, out of proportion, or the value of it.

Q. What effect does the lack of inspection of poultry have upon the prices of selling culls? A. Facilitates or makes much easier the bringing in of culls, makes it much easier to sell them, and you can handle a considerably larger volume of them.

Q. Does it have the effect of inducing larger
875 shipments of culls? A. Naturally, to meet competition of the next man that handles culls.

Q. What other effect does the lack of inspection have upon the character of poultry brought in or sold, other than culls? Does it have any effect upon the crops of chickens? A. Well, if you have no inspection—I can best explain it with the condition that exists here in New York at the present time. We have an inspection for crop content in the New York market; Newark has no such inspection. And as a result of that fact a shipper would rather ship his car into
876 Newark, all things being equal, than he would to the New York market, because he can give it an unlimited increase of feed, and the weight resulting will be 500 pounds to a car better in the Newark market on account of the lack of inspection. And the same thing applies to New York; if we could get poultry into our place that wasn't inspected and take it in with the larger crops, why, it would be much easier for us to attract additional shippers, and we could get shippers on a much more advantageous basis than we do at the present time.

Q. I believe you have already testified that since the Live Poultry Code became effective,

that there has been a much more rigid inspection of live poultry. A. I think so.

Q. And do you know whether or not that has had any effect upon the volume of culls shipped into the New York market from other States? A. My particular experience with shippers we have been doing business with——

Mr. Heller: I object to his particular experience; we do not want it limited to his particular experience, it should be general. 878

The Court: Give it to us generally, not your own personal experience. Do you know as a general thing whether that is so?

The Witness: Yes; it has been cut down considerably.

Q. Will you explain the practice of straight killing?

Mr. Heller: He has already explained that; we have been all over this before.

The Court: I do not know whether he has or not; he touched on it, but I do not think he explained it particularly. 879

The Witness: Poultry is handled in large, long coops that contain 40 to 60 heads to a coop; and by straight killing they mean that when a man comes in and buys half a coop of poultry, instead of grading and picking out 10 or 15 heads out of that coop and some more out of the car, he has to take it straight the way it runs.

880 Q. Suppose he wants to buy just five heads of chickens, is he permitted to buy five heads? A. On straight killing?

Q. Straight killing, as you understand it, applies only where the buyer is buying a half coop or full coop, is that right? A. Oh, you can also have straight killing. In our particular place we keep poultry in batteries, where is contained the whole six heads, and you can still give them poultry straight. Very few of them order less than a dozen heads at a time and you can still give it to them straight without waiting.

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Q. Will you explain the practice of selective killing that existed prior to the time that the Code became effective? A. Well, at that time a buyer went in and handled each bird himself and picked out just what he wanted.

Q. What time of the morning did the buyers come in? A. Well, killing starts at seven o'clock on Monday, Tuesday and Wednesday, five on Thursday and at six on Friday, and they used to come in anywhere from ten minutes before killing time to two hours before killing time.

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Q. For what purpose? A. Picking out the poultry that they wanted.

Q. Explain the method of selecting the poultry prior to the time the Code became effective? A. Well, they would merely go into a place and pull a slat off the coop and pick out what they wanted, or if they were taking quite an amount, they would pull out of the coop what they did not want, and when it came time to slaughter the poultry, the poultry they picked out would be in a separate container and would be just what they wanted for size and quality.

Q. What happened to the rest of this poultry? A. It was sold at a cheaper price to whichever

buyer they could get at a satisfactory price. It was a sacrifice price.

Q. The selected poultry picked by the first buyer, did the first buyer pay normal price or did he pay a premium? A. No, the normal price.

Q. For that poultry. He paid the normal price? A. I would consider he even paid a sub-normal price for it.

Q. Why? A. Did not pay as much as it was worth, did not pay for the cost of grading.

Q. And the buyers who came second and 884
bought the picked over poultry bought at a sacrifice price? A. At a considerable sacrifice price.

Q. What was the result of this practice of selective killing upon market price? A. Well, that knocked the market price down and created a demand for cheaper poultry again to compete with that existing cheap poultry.

Q. Why? A. Because if a man goes out and sells poultry cheap, his next door neighbor wants to buy poultry that he can sell just as cheap on a competitive basis, and he will have a lot of trouble getting considerably higher prices for 885
better merchandise on account of the larger volume of cheaper poultry that was on the market being sold.

Q. You have spoken of the practice of grading poultry in the Chicago market. Do you know whether the practice of straight killing as required by the Live Poultry Code would have any effect upon the practice of grading the poultry prior to shipment? A. It would force grading, that is, grading out in the country, in the New York market.

Q. What type of grading? A. Both for size and quality.

886 Q. That is, if the practice of straight killing were enforced in New York City the poultry shipped into New York would be graded prior to shipment? A. That is correct.

Q. According to size and quality? A. And quality.

Q. Are you familiar with the costs of operating a live poultry slaughter house? A. Yes, sir.

Q. Approximately what percentage of the costs are labor costs? A. Fifty to 60 per cent.

Q. Fifty to 60 per cent.? A. Our labor costs.

887 Q. In your opinion, Mr. Tottis, would the payment of smaller wages than those required by the Code have any effect upon the market price of poultry?

Mr. Heller: That is objected to. There has been no foundation laid for this testimony.

The Court: Why?

Mr. Heller: There are no facts whatever to show what labor charges are.

The Court: By inference, the less the

888 cost of operating the less he can sell for at the same profit.

Mr. Heller: I suppose we should have a table or a statement showing what the labor charges were at one period of time and what it is now.

The Court: That is not what he asked him. He asked him what the labor charges were and he said 50 to 60 per cent. And now he asks him, if the costs paid for labor be reduced would it have an effect on the market price. I think anybody could answer that, couldn't they, out of hand?

Mr. Heller: I could not.

The Court: You could draw inferences, couldn't you? Your labor cost you less, you could operate at less cost.

Mr. Heller: The objection to inferences is that this is a criminal case.

The Court: That is a mathematical inference. If any one element of your cost is reduced your total cost is reduced.

Mr. Heller: I think the jury can draw their own conclusion. 890

The Court: I will let him answer.

Mr. Heller: Exception.

The Witness: Will you repeat the question?

(The reporter repeated the last question.)

A. Well, if everybody paid the same wage, it would not have an effect, but if one man could operate cheaper than the next and correspondingly sell his poultry cheaper than the next, then the tendency is the man with the higher wage scale would try to buy cheaper poultry to compete with him. 891

Q. And the result is that more cheaper poultry is brought into the New York market? A. It would have that tendency.

Q. Do you know whether it has been the practice in the live poultry trade in New York to reduce the prices of poultry where there has been a reduction in the wages paid to employees?

Mr. Heller: Objected to. There is no testimony that there has been a reduction.

The Court: He can give an opinion as to what the result would be, but I do not

think there has been any evidence up to date.

Mr. Rice: I will withdraw that question.

Q. Is it the practice of the poultry people in New York to reduce their prices to correspond with the amount paid out in wages and salaries? A. I don't get that quite clearly.

Mr. Heller: I object to that, if your Honor pleases.

893 The Court: Well, he may state if he knows.

Mr. Heller: Exception.

The Witness: I would say yes.

Q. Do you know whether or not it has been the practice of poultry market men in New York to sell for a small margin above their cost of operation? A. Yes, they sell for a very small margin above the cost of operation.

Q. If the costs of operation are reduced, has it been the practice to reduce their prices? A. To reduce their selling prices, yes.

894 Q. Are you familiar with the Code provisions prohibiting employees in slaughter houses from working more than 48 hours a week? A. Yes, sir.

Q. In your opinion, Mr. Tottis, would the practice of requiring employees to work in excess of 48 hours, have any effect upon the prices of poultry?

Mr. Heller: I object to the question. There has been no foundation laid.

The Court: I will let him answer. It is an opinion. If it is not connected up, it means nothing.

Mr. Heller: Exception.

895 A. Well, where a man cannot work his men over 48 hours, naturally, he would have to get extra help, and, increasing his cost of operation, it would work the same way as if he was competing with a man that was working below the Code wages, he would have to cut down his selling price and try to get cheaper poultry to compete.

Mr Heller: If your Honor pleases, may we have a short recess at this time?

896 The Court: Yes. Gentlemen of the Jury, I admonish you not to discuss this case with anybody, or among yourselves. You may take a recess of five minutes.

Q. Mr. Tottis, you have spoken of the effect of paying less than Code wages, or requiring employees to work more than Code hours upon the prices of poultry. I believe you have just stated that it has the effect of inducing the slaughter house operators to purchase cheaper poultry; is that correct? A. That is right.

897 Q. What effect does that have upon the market price of poultry in New York? A. Brings down the price of better poultry because it increases the demand for the middle grades and cheaper grades, and there is a less demand for the finer grades, and it has a tendency to depress the price.

Q. Does it have any effect on the character of the poultry shipped? A. Naturally, it depresses the price of the better quality poultry, it depresses the price on the better grade of poultry out in the country, and they are shipped in to markets where they can get a more advantageous price for it.

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Q. Does it have any effect upon the character of the shipments to the New York market? A. What do you mean by the character of them?

Q. The type poultry shipped. A. There will be less of good poultry come in here.

Q. And more of poor poultry? A. More of the poorer grades.

Q. And it has the effect of reducing the returns to the interstate shippers? A. That is right.

899 Q. And does it have any effect upon the farmer? A. Naturally, he will get less money for his poultry.

Q. Do you know of any poultry inspection service other than the Joint Inspection Service, operated by the Bureau of Agricultural Economics in New York? A. Not in New York.

Q. Do you know whether poultry is inspected by veterinarians in New York who are not in the employ of the Joint Inspection Service? A. Not that I know of.

Q. Are you familiar with the requirements of the New York Board of Health? A. Yes, sir.

900 Q. As they existed prior to the month of September, 1934?

Mr. Heller: I object to that as not being the best evidence.

Mr. Rice: I will withdraw the question, your Honor.

Q. When poultry comes in by truck, do you know what the arrangement for inspection is? A. Yes, sir.

Q. What is it? A. There are several terminals and places of inspection around New York City where you have to take that poultry to get

it inspected, and you go through the same procedure, notify the Inspection Service, tell them that you have a truckload of poultry, and require to have it inspected. The inspector appears after a while, and you make out an inspection request on a form card, and he inspects the poultry.

Q. And if a market man goes to Philadelphia and purchases a truckload of inferior poultry or sickly poultry and does not request inspection, is it inspected? A. No, sir. 902

Mr. Heller: I object to the form of the question.

The Court: He is telling what he knows. I suppose it is a fact; I do not know.

Mr. Heller: There is no testimony here that a truckload came from Philadelphia or any other place.

The Court: No, there isn't, but if any chickens come in from the outside, from outside the State of New York, by truck, is that inspected, if there is no request made? 903

Q. Will you answer his Honor's question? A. No inspection is made, only upon request.

The Court: Whether the chickens are good or bad, they won't be inspected unless there is a request made?

The Witness: Yes, sir.

The Court: That must be made by whom?

The Witness: By the owner of the poultry or the receiver of the poultry on this end.

The Court: All right.

904 Q. After such poultry is inspected, what evidences of inspection are given to the market man? A. There is a tag or label with the date of the inspection and the certificate number of it—or, rather, the number of the inspection request is stamped on these labels and the labels are affixed to the container in which the poultry is.

Q. That is, the labels are glued onto the coop or the basket, whichever it happens to be? A. To the coop or basket, whichever it happens to
905 be, yes, sir.

Q. Now, you were here yesterday when Dr. Ives testified on cross examination that certain poultry with colds might pass inspection provided that they be sold within twenty-four hours, did you hear that testimony? A. Yes, sir.

The Court: He already testified to that himself, I believe—I think he did—that some poultry was passed for immediate killing, that had to be killed that day, within twenty-four hours, and others could be
906 stored.

Q. Do you know what the purpose of that requirement is? A. To keep the disease from spreading.

Q. Now, how about poultry with colds, where the poultry is not yet unfit for human consumption, can that poultry be slaughtered within twenty-four hours? A. Yes.

Q. And safely sold to the consuming public? A. Yes, sir.

Q. Now, after the container of poultry bearing the inspection label has been emptied, what hap-

pens to that container? A. It should be cleaned and the label destroyed.

Q. You mean it should be cleaned? A. The regulations of the Board of Health require the container to be cleaned after each time it is used.

Q. What happens to the old inspection label? A. It is destroyed.

Q. You mean it should be destroyed? A. Should be destroyed.

Q. Now, Mr. Tottis, if truck poultry is brought into New York and the buyer does not request 908
inspection of that poultry, what effect does that have upon the type of poultry that is brought in from other States? A. Well, it would have a tendency that the shipper will be able to—will know that he can bring in poultry without inspection, he can feed it whatever he wants and ship any type of quality in that he cares to.

Q. Does it have an effect of inducing shipments of sickly, diseased poultry? A. Because he can get away with it.

Q. And of inferior poultry? A. Because he can get away with that too. 909

Q. And does it have any effect upon the market prices? A. Naturally, you are getting more cheap poultry in, and it will have a tendency to depress the price of better poultry.

Q. Does that have any effect upon the prices that the interstate shipper receives for the poultry which he sells to the New York market? A. Naturally it depresses his price too.

Q. And likewise it has some effect upon the farmer? A. That is right.

Mr. Rice: That is all.

910 *Cross examination by Mr. Heller:*

Q. Do I understand that you made a special study of the industry for the past 7 years, is that my understanding? A. That I have been in it for 7 years, and while I have been in it I have tried to make a study of it.

Q. You mean you have devoted your entire time while being connected with the firm for a period of 7 years to the study of the industry? A. That is what I tried to do.

911 Q. What are your duties with this particular firm that you are connected with? A. Soliciting and buying at the present time.

Q. For the past 7 years will you give us, year by year, just what your duties were, just generally? A. Originally, when I went with the company, in order to learn the poultry business, I worked in the slaughter house and actually handled poultry.

Q. For about how long? A. I still do that occasionally.

Q. Was that your major function when you
912 entered into the company's employ originally? A. The idea was to learn——

Q. Just answer my question. A. Will you repeat the question?

(Reporter repeated last question.)

A. At that time it was.

Q. Now tell me for how long a period, from the time you entered the employ of the company, you made that your major function? A. For about three years.

Q. In other words, you were confined to the place of business and studied the industry from

your place of business for a period of three years, is that correct? A. That is right.

Q. And that is from what year to what year? A. 1927 to 1930.

Q. From then on what did you do, what were your functions? A. My—in addition to the work that I was doing in the slaughter house, to look after the unloading of live cars for about a year, then, after that, I had the additional duties of soliciting and buying poultry.

Q. In other words, from the year 1930 to 1934, you performed duties within the place such as the unloading of cars, and also purchasing and selling poultry? 914 A. That is right.

Q. Where did you purchase and where did you sell poultry for the last four years? A. Where did I purchase them?

Q. Yes. A. Want it by States?

Q. Yes; how much time did you stay away from the city? A. My time out of the city was approximately four months out of each year.

Q. That is during the past four years? A. That is right.

Q. Left the City of New York for different States in the country to buy poultry, is that correct? 915 A. That is right.

Q. That happened regularly for four months out of every year? A. That is right.

Q. And you traveled from what State to what State? A. I traveled every State east of the Mississippi River except Florida. Minnesota, North and South Dakota, Wisconsin, Iowa, Kansas, Arkansas and Oklahoma.

Q. During these four months of every year you purchased sufficient poultry for your firm for the rest of the year, is that the idea? A. No.

Q. I beg your pardon? A. No, sir.

916 Q. You merely purchased them for how long a time? A. The way we work, you travel around, you make a contact with the shipper, that may cover three or four States, and it is for no specific period of time, then from time to time I talk on the telephone two or three times a week and tell him what we want for the following week, and from what sections of the country you want it, and what type of poultry you want.

917 Q. In other words, you made a contact with these different agencies every four months a year, and thereafter ordered your poultry from that agency, is that correct, as you needed it? A. That is right.

The Court: Was this four months continuous?

The Witness: No, from time to time, about two-week stretches.

Q. In other words, you left the city for a period of two years, and then you would come back? A. Two weeks.

918 Q. I meant two weeks, and then you would come back? A. Yes.

Q. And then you would go away again for two weeks? A. That is right, approximately.

Q. And about what part of the year did these two weeks fit in? A. About every two months, take a trip.

Q. And every two months you take off about two weeks? A. Yes.

Q. And the rest of the time you spend at your plant? A. Not all of it; some at the plant, some at the various railroad terminals around New York, to see how poultry is running.

Q. In other words, you went from railroad to railroad to see you got the proper poultry? A. No, to see how poultry is running in the various sections of the country.

Q. What does your concern do? Do they buy and sell poultry? A. Yes, sir.

Q. Isn't it your duty to effect sales and purchases of poultry? A. Is that my duty?

Q. Was that part of your duties with your firm? A. Not to effect sales. I am not a salesman.

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Q. To make purchases for your concern? A. Yes.

Q. What was the purpose of going from railroad to railroad, as the time went on? A. To see how poultry ran that came in from different sections of the country from which we were not receiving poultry, to see if it ran any better.

Q. In other words, you were interested in ascertaining whether you made a good buy or not, is that it? A. No.

Q. Or you wanted to change the purchaser? A. No.

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Q. What then? A. To get an idea of the general market conditions and a general idea what selling condtions were like.

Q. Well, now, suppose you had placed your order for a week's merchandise, week's needs, and then you say the next week you would go to different markets to see what came in from different sources? A. No, I do that from time to time, not necessarily because I want another week's poultry.

Q. I mean what would be the real purpose in that, to change your method of buying? A. Yes, for instance if I were in a section of the country that happened to be shipping larger chickens

when a smaller sized chicken was more desirable, I could find out down there what section of the country was shipping smaller sized chickens and then get my supply of poultry from that section of the country.

Q. Now, what factors would determine whether a small or large chicken would be desirable for your business? A. The selling conditions, the demands of our customers.

Q. Suppose a hundred customers want small
923 chickens for this week, does that mean that the same hundred customers will want the same kind of small chickens the next week, the same size? A. Here in New York the size of chickens will vary, they will vary even in one carload, and there is a seasonal variation. As the season progresses the larger proportion of larger chickens, it runs larger. I can best put it this way——

Q. Let us take it from that point——

Mr. Rice: Let us have a complete answer.

The Court: We have had an answer,
924 but he wanted to enlarge it.

Mr. Heller: Yes, he answered it, we will come to that in a minute.

The Court: All right, go ahead.

Q. In other words it depends upon the season of the year as to when we get a large crop of large chickens or small crop of small chickens or vice versa? A. Plus the section of the country.

Q. You are at liberty as a commission merchant to buy from whatever source you desire, is that correct? A. Yes.

Q. In other words what comes into the State of New York depends largely on the commission merchants? A. That is right.

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Q. In other words they have a right to reject chickens or not to buy certain chickens if they so desire? A. That is right.

Q. You are a commission merchant, is that right? A. That is it.

Q. And you know these defendants are a wholesale slaughter house? A. Yes.

Q. Do you happen to know them? A. Personally I do not know them, no.

Q. But you have heard of the fact they are a wholesale slaughter house? A. Yes.

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Q. They buy their chickens from the commission merchants, is that right? A. Presumably, yes.

Q. Yes, and they are limited to buy the chickens that are in the State, is that correct, whatever the commission merchant has to offer? A. Not necessarily.

Q. Assuming that a wholesale slaughter house man needs 10,000 pounds on a Monday, he has to take what the commission merchant may have to offer, must he not? He can go to the commission merchant and buy what he has for sale?

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A. Yes, he could.

Q. In other words if he wanted 10,000 pounds of chicken he would go down to the West Washington Market if he dealt with some commission merchant down there, wouldn't he? A. Yes.

Q. And he would get 10,000 pounds of chickens, whatever chickens he wanted? A. Of whatever he wanted.

Q. By picking from whatever was in the State at that time? A. No, not necessarily.

Q. Then how would he get his 10,000 pounds of chicken? A. If he didn't like the New York market he has the Philadelphia market to go to,

and he has the Newark market available to him, and he can get some truckman, some one of these overnight truckers to go to other places and get him what he wants if he can't get what he wants here.

Q. Suppose he needed 10,000 pounds of chicken on Monday at ten o'clock, when he comes down to the West Washington Market, would he have to take whatever is there? A. If he came down Monday and wanted 10,000 pounds—when he came down to the railroad at ten o'clock or
929 what?

Q. Now a man needs merchandise and he has no other sources and no other States to buy from and he comes down with his truck to a regular market, is he limited in taking from whatever chickens are there? A. Naturally.

Q. He has no alternative, has he? A. No.

Q. He does not control as to what comes in and what goes out? A. No.

Q. The commission merchant does that? A. Presumably yes.

Q. Now there are certain designated markets
930 which are known as States from where the bad chickens come from, is that correct? A. Some States run worse than others.

Q. Well, there are certain particular States are there not? A. Yes.

Q. Do you happen to know of some of them? A. Nebraska and Iowa run a lot of poor stuff into New York.

Q. Well, isn't it a fact that three-fifths of all the culls that come into New York City come from the States of Missouri, Kansas, Illinois and Oklahoma? A. What are those States again?

The Court: Read it.

(Reporter reads the last question.)

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Q. Is that right? A. That has not been my experience.

Q. Now where was your experience any greater than the Government experience in computing these figures? A. I cannot tell you that. Are you talking about culls or sick cars?

Q. Culls. Would you take a statement from the Senior Economic Division of the Agricultural Department, that is the Bureau of Agricultural Economics of the Department of Agriculture as correct? A. Yes.

932

Mr. Rice: Now I object to the form of the question. We have no objection to introducing this document in evidence, in fact we want it in.

The Court: I will overrule the objection.

Mr. Rice: Exception.

Q. Does it not remain a fact that it is up to the shipper as to whether or not he wants to buy these culls? A. Yes.

Q. Now a cull is not always a sick chicken, is it—yes or no? A. What do you mean by cull? 933

Q. That is exactly my word, is a cull always a sick chicken or not? A. Well, different people have different definitions of the word cull.

Q. In other words your definition might be different than mine? A. Yes.

Q. Well, would you take this definition given by the Government as the correct definition: it is fit for human food, but which may be thin, lacking vigor or deformed or blemished in such a way as to render it salable only at a discount? A. We consider that an undesirable or second.

934 Q. Well, is that fit for human consumption? A. Yes, but the Government's definition does not necessarily mean the trade's definition. For instance, you take a grade A egg, in New York. Well, there are eight different states that give a grade A egg different descriptions or definitions. That may be the Government's definition of a cull, but it is not the trade's term.

Q. It is not yours? A. Or, the trade's.

Q. Do you know that the Government has gotten this information from the trade? A. I cannot tell you, was it the New York trade or some other trade?

935

Q. Well, will you take now as correct the definition of cull? A. Yes, the cull to my mind would be the same as an undesirable.

Q. But it is still fit for human consumption? A. Yes, with that definition.

Q. Now you characterized certain conditions that existed prior to the 1926, on direct examination. A. Yes.

Q. As to inspections for instance, did you not? A. Yes, sir.

936 Q. Now as I understand it you first came into this business in the year 1927? A. That's right.

Q. Where did you get the information with reference to the year 1926, and prior thereto? A. At that time there was a Mr. Sorley that inaugurated this Inspection Service. I became interested in the poultry business through him. I had a position at that time that gave me plenty of leisure and I spent a lot of time with him.

Q. And who is Mr. Sorley? A. He was the originator and general manager of the New York Live Poultry Commission Merchants Association.

Q. And he imparted certain knowledge with reference to conditions existing in the year 1926, to you? A. That's right.

Q. Now you are basing your opinion today as an expert of what he told you, yes or no? A. No.

Q. What else are you basing your opinion upon as to what happened in 1926? A. Observation.

Q. Now were you in the chicken business before 1926? A. I was not in the business myself, but I spent a lot of time in it. I was in a lot 938
of cars and I saw them unloading and I saw the type of feed used.

Q. What did you do in 1926? A. I worked with an electrical truck manufacturer.

Q. Will you give us the name, please? A. The Ward Motor Vehicle Company.

Q. And what were your duties with that company? A. Electrical engineer.

Q. And what were the functions of that company? A. Installing electrical equipment.

Q. Where? A. In fleet truck users. 939

Q. In the City of New York? A. Not necessarily, no.

Q. You went out to sell for them? A. No.

Q. Well, what did you do for them? A. I installed electrical equipment and I made surveys of actual conditions of electrical truck users and I recommended equipment.

Q. Did you do the manual work? A. No.

Q. You did the investigation work? A. Call it surveys.

Q. In other words, you were trying—— A. Consultant work.

Q. I beg your pardon? A. It is more consultant work.

940 Q. Consulting work? A. Yes.

Q. Consisting of engineering work? A. Yes.

Q. With reference to cars? A. Yes, sir.

Q. And how long were you employed in that employment prior to 1926? A. Four years.

Q. That is, from 1922 until 1926? A. That is right.

Q. And that had something to do with electricity, electrical cars? A. Yes.

Q. Equipment? A. That is right.

Q. Is that correct? A. That is right.

941 Q. And prior to that time with whom were you employed? A. Transit Commission, New York State.

Q. And the nature of that work? A. Mechanical engineering.

Q. For how long a time? A. A year.

Q. That had nothing to do with the poultry business? A. That is right.

Q. Have you observed from the time of your employment with this electrical company the functions of the poultry industry from day to day? A. No.

942 Q. Prior to 1926? A. Not from day to day.

Q. In your spare time? A. Yes.

Q. Sundays? A. No.

Q. You were working five or six days a week? A. No.

Q. How many days a week did you work? A. Some weeks five, sometimes one.

Q. You were on a part time basis? A. Full time.

Q. What did you do with the rest of the time? A. Whatever I felt like, and whatever interested me at the time.

Q. You mean the electrical company was paying you for observing other features or other economic conditions? A. They were paying me for being at their beck and call whenever they needed me.

Q. But you had your time to yourself? A. That is right.

Q. You did not have to do any work for the company, although they paid you for it? A. That is right.

Q. And during that time you were interested in the live poultry industry? A. That is right. 944

Q. And you consulted with the gentleman you spoke of? A. Yes.

Q. I suppose you contemplated going into the poultry industry at that time? A. Yes.

Q. For a period of five years before? A. No, not for five years.

Q. For how many? A. Two years.

Q. And in 1925 and 1926? A. Yes.

Q. You made a study of the industry then? A. Yes.

Q. Is that correct? A. Yes. 945

Q. You were particularly interested in the inspection service at that time? A. Not particularly, no more so than other phases of it.

Q. Well, why were you interested in the inspection service? A. Because I happened to be friendly with a man who at that time was the chief veterinarian in charge of the Inspection Service, I had gone to college with him, and I was quite friendly with him.

Q. I understood you to say there was no inspection service before 1926. A. There was an inspection service then; it was inaugurated in 1926.

Q. I am talking about prior to 1926; do you now say that there was an inspection service prior to 1926? A. Not that I know of.

Q. But nevertheless you spoke to this gentleman about an inspection service prior to 1926? A. Not about an inspection service, about poultry business in general.

Q. So you know nothing about the inspection service prior to 1926? A. Yes, by hearsay, just what I have been told about conditions that existed then.

947 Q. From whom did you hear that? A. From this chief veterinarian that assisted in the inauguration of the original inspection service.

Q. You have no knowledge as to what happened prior to 1926, yourself, except what he explained to you? A. Yes.

Q. Is that correct? A. Of course, since then, since I have been in the poultry business, I have talked to a lot of different people that have been running cars for years and years, and they have explained to me about the conditions that existed prior to the inspection service.

948 Q. Do you consider yourself as an economist? A. No.

Q. You claim merely that you have a peculiar knowledge about this industry, is that correct? A. That is right.

Q. Have you tabulated as to how many chickens came in last year, came in and were sold in the City of New York? A. Individual chickens?

Q. Yes, or the poundage? A. No, I have the Government reports, that is all.

Q. In other words, your expertness consists of a study of Government reports, is that correct? A. Partially.

Q. Do you know how many chickens were raised last year? A. Raised?

Q. Yes, on the farms. A. No, that I do not.

Q. Do you know whether it was greater last year than the year before? A. It was about 5 per cent. less.

Q. Less than the year before? A. I believe so.

Q. Do you know whether chickens that were raised and sold last year were greater in the year before? A. Offhand, I do not remember those figures. 950

Q. What makes that figure so clear in your mind, what makes you remember that last year there were 5 per cent. less than the year before? A. For the same reason that I remember that this year there are 10 per cent. less poultry, because it just happened to stick in my mind.

Q. Are you sure that assumption is correct? A. Which assumption is that?

Q. That they raised more chickens, or there were less raised last year than the year before? A. And 10 per cent. this year than last year.

Q. You are sure about that? A. Fairly. 951

Q. Are you certain? A. I am not interested enough to worry about it particularly.

Q. We want to worry about it because these defendants are being charged with a crime, and the jury are entitled to know. Will you now try to remember it with certainty, if you can? A. I could not with certainty.

Mr. Rice: If your Honor please, may I inquire as to the relevancy of this line of examination?

The Court: Yes; he is examining him as to his qualifications as an expert.

952 Mr. Rice: Very well; if it is for that purpose, I have no objection.

Q. Now, isn't it a fact that in the year 1933 more chickens were raised and sold than in 1932 or 1931? A. I wouldn't be sure of that.

Q. You wouldn't be sure it was not so, would you? A. I have no recollection of it at the present time, to be definite.

Q. You gave testimony on direct examination that certain conditions affected the poultry in-
953 dustry, and there has been a decrease from year to year. A. Decrease in the consumption of live poultry in New York, not generally throughout the United States, or what was raised on the farm.

Q. On what do you base that? A. On the Government report figures.

Q. What is that? A. On the Government reports again.

Q. Let me read to you something about a Government report and see whether you agree with this statement or not——

954 The Court: Wait a minute, what report is it?

Mr. Heller: United States Department of Agriculture, Bureau of Agricultural Economics, Washington, D. C., estimates of chickens for the years 1931 to 1934.

Mr. Rice: What year?

Mr. Heller: 1931 to 1934.

Mr. Rice: Oh, very well.

Q. Do you agree with this statement: "More chickens were raised on farms last year than in 1932"? Do you agree with that? A. Than were raised on the farms, on the farms in 1932?

Q. Yes. A. Well, they say it of farms——

Q. Just answer me, whether you agree with that statement or not. A. That statement is not clear to me. Do they mean on farms actually hen-hatched or does it include the hatchery report on commercial chicks?

Q. Will you just answer my question?

The Court: He is asking you a question.

Mr. Heller: I am not on the witness stand, your Honor. 956

The Witness: I do not know what you mean by that question. I do not know what they mean by it.

Q. I will take that for an answer. A. Take it for an answer, if that includes——

The Court: All right, one minute. No question.

Q. Do you agree with this statement, "The number of chickens raised on farms in 1933 is estimated at 662,550,000, which is 1 1/10 per 957 cent. more than in 1932, and 5 3/10 per cent. more than in 1931." Do you agree with that? A. Yes, that I will.

The Court: That is taken from the same——

Mr. Heller: Same paper that I am reading from.

Q. Do you agree with this statement, "The number of chickens sold from farms in 1933 is estimated at 387,784,000, being 3 4/10 per cent. more than in 1932 and 3 per cent. more than

958 in 1931 and 5 1/10 per cent. more than the average for five years, 1926 to 1930"? Do you agree with that statement? A. Why, I have no reason to disagree, if it is a Government report. I am not acquainted with the poultry conditions through the West and the Pacific Coast or down South. I merely know about the conditions around in the metropolitan district here.

Q. In preparing yourself as an expert don't you think that you should be familiar with this information that the Government is giving
959 clearly to everybody? A. Not necessarily.

Mr. Rice: I object.

The Court: He has answered.

Q. Do you know that farmers have consumed more chickens last year than the year before? A. Yes, that I do know.

Q. Wouldn't that be an element to take into consideration as to whether or not more chickens can be sold to the different markets? A. No, because the farmer's economic condition will
960 have a bearing on that.

Q. You mean if a farmer has no money he has to eat his own chickens, is that right? A. That is correct, he hasn't the money to go out and buy meat.

Q. And therefore he sells less, is that correct? A. That is right.

Q. And that would affect the market all over the United States, wouldn't it? A. Not necessarily.

Q. Why not? A. Because if he raised more, even though he did eat more, there would still be more available for the market.

961

Q. Assuming he raised much. A. That is different.

Q. Then it would affect the market, would it not? A. If it would be an appreciable volume.

Q. Yes, now, you have no presentation of statistics to tell us exactly the standing of the situation from year to year, have you? A. No, I have not.

Q. Isn't it also a fact that a farmer sells his chickens mostly when he needs money? A. No, not necessarily.

962

Q. Isn't it a fact that the farmer before Christmas, when he needs some money for Chrismas, goes out and sells more chickens at that particular time? A. Possibly.

Q. And that would tend to vary the sale of chickens from month to month depending on when the farmer sells his chickens? A. Well, the farmer will sell his chickens whenever he needs to, whenever he wants money, or, if he is able to ship them to market before their grade changes so he will get less money.

963

Q. Did I understand you to say that Newark gets better grade chicken than New York? A. Not necessarily. I said there were more cars of top market chickens—a larger proportion of the total cars that came into Newark bring top market than they do in New York.

Q. What do you mean by top market? A. Well, a market is quoted this way for instance these days; Indiana grade 17 cents; fancy western 16 cents; western 15 cents; average 14 cents. There will be more cars sold in the Newark market or a larger percentage of their total cars will bring the 17 cents market price than will be sold in the New York market.

964 *Theodore J. Tottis—By Govt.—Cross*

Q. Now didn't I understand your testimony on direct examination to be that Newark gets a better class of chickens? A. No, a larger percentage.

Q. A larger percentage of chickens? A. A larger percentage of their total supply is top market than the New York supply.

Q. And they had no inspection there? A. That's right.

Q. And we have inspections? A. That's right.

965 Q. Now isn't it a fact in determining what percentage of culls come into New York City you must take into consideration the quantity of good chickens that come into the City of New York? A. Not necessarily.

Q. Wouldn't it vary with the amount of chickens that come in? A. Let me explain it this way; you can get an ordinary grade or an ordinary car of just fair poultry and they will have no culls in it, if you call it culls or poultry that is unfit. Then, you can get a car of ordinary poultry that will run no culls and you can get a

966 car of your fancy poultry that will run a thousand pounds of culls.

Q. Wouldn't you be more apt to find more culls in the city or state where more chickens come in, isn't that right? A. Depending on the grade of poultry that they handle.

Q. Assume that they come from states that usually ship good poultry, except the four states that I mentioned, you would find some culls? A. Yes.

Q. And you would find some unfit chickens? A. Yes.

Q. Now the greater number would be found wherever the greater quantity is received? A.

Not necessarily. You take a city like Chicago where the shipper knows that his poultry is going to be graded and the culls destroyed. Chicago runs a considerable volume of poultry, but the percentage of culls, on account of that inspection, is negligible, compared with a city like Newark.

Q. Now, are chickens inspected at the source of shipment or at the source of receipt? A. The B. A. E. inspected——

Q. For New York purposes. A. At this end of the market. 968

Q. So that nobody knows what is in the carload when it leaves the source, to destination? A. The shipper knows.

Q. Does the shipper examine every chicken, whether it is unfit or fit? A. It is his business to.

Q. The shipper on the other end? A. Or his employees, yes.

Q. Examines the chickens? A. Yes.

Q. Now, are they qualified to do that? A. Certainly. 969

Q. Anybody is qualified to inspect chickens in that business? A. I imagine they have a fair working knowlege of it.

Q. And they could ascertain whether or not the chickens were fit or not at the time they shipped them to New York? A. With the exception of any disease that they may contract in transit.

Q. That they would know about? A. No.

Q. Well, now suppose a chicken had a cold, that would not deter them from shipping chickens? A. Yes, it would.

970 *Theodore J. Tottis—By Govt.—Cross*

Q. Isn't it a fact that the inspectors in New York pass chickens for examination that have colds? A. Yes, but you see——

Q. Answer yes or no.

The Court: No, let him answer.

The Witness: He will notice a few chickens in his car that have colds and he knows that New York is a fourth morning delivery and unless he gets those chickens out he is going to have a considerable quan-

971 tity sick at the time that it arrives in New York, four days later, it is to his financial advantage to keep that stuff out of his car.

Q. Is it possible for a chicken to contract the cold in transit? A. Yes.

Q. It will spread to other chickens? A. Possibly.

Q. And still it would be slaughtered in New York for immediate consumption? A. Not if it had reached an advanced stage.

972 Q. You mean when it is dying? A. No, when it has reached the gaping stage.

Q. Are you familiar with the cross marks that they put on chickens "Passed for immediate consumption"? A. Yes, you mean the red crosses on the coops.

Q. Now, is this the label that they put on the boxes after they have been inspected? A. Yes, that is the label (witness examines label).

Mr. Heller: I offer it in evidence.

Mr. Rice: No objection.

The Court: It will be received.

(Marked Defendant's Exhibit B in evidence.)

973

Q. Do you know that these inspection slips merely recite the fact that the particular poultry contained in the coop or crate were from a lot which was approved? A. Yes.

Q. It does not necessarily mean that each and every chicken was inspected? A. It should be.

Q. You heard Dr. Ives testify yesterday? A. I did.

Q. Do you remember him saying that the inspector is required to at least feel 100 chickens and his average is 200 out of 4,000? A. Yes.

974

Q. And did you hear him say that he may observe with his eyes some other chickens during the course of his inspection, as to whether or not they had any visible disease? A. That's right.

Q. Do you remember him saying you cannot see what was in the back? A. I disagree with him with some of these statements.

Q. Do you remember him saying that, that is saying that.

Q. You are not an inspector, are you? A. No. all I am asking you? A. Yes, I remember him

Q. You don't do any inspection work, do you? A. No, but before we put a Government inspector into a car I inspect every car myself.

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Q. For your own firm? A. That's right.

Q. You have a peculiar system of doing business. A. I don't know whether you could call it peculiar or not, I call it good.

Mr. Heller: So do I.

Q. But it is limited to your business as far as you know, is that correct? A. Yes, that is correct.

Q. It is not uniform, that you know of? A. No.

976 *Theodore J. Tottis—By Govt.—Cross*

Q. Did you hear him say you cannot detect grave diseases such as cancer or cholera until a chicken is opened? A. Yes.

Q. That is correct, isn't it? A. That is right.

Q. So when you told us before that the only way you can ascertain that was by—— A. A post-mortem examination.

Q. By a post-mortem examination, so that the purchaser, as far as he is concerned, could not tell whether a chicken has cholera or not until they open it, is that correct? A. Yes.

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Q. They buy the chickens alive, do they not? A. Yes.

Q. That is, so far as the defendants herein are concerned? A. Yes.

Q. They are brought into their place of business, in this case in Brooklyn, is that correct? A. Yes.

Q. Then the purchaser or the chicken dealer buys those chickens, is that correct? A. That is correct.

Q. And they give them to what they call a shocht, and he kills them, is that correct? A.

978 That is right.

Q. They could not detect whether or not a chicken has cholera until after the housewife opens the chicken? A. Cholera you cannot.

Q. And if the chicken had a cold it would make no difference, if it weren't a severe cold? A. No, not if it is in the sneezing stage.

Q. Well, anything might happen between the time he buys the chickens in the West Washington Market until the time that they are transported to Brooklyn and arrive at their place? A. No, not necessarily.

979

Q. A chicken having a slight cold, it could become more severe in 24 hours; will it not? A. It will take over 24 hours for it really to become a a gapper.

Q. Is there any difference between a cold in a chicken and in a human being? A. That I can't tell you.

The Court: He hasn't qualified as to human beings.

Mr. Heller: I take it he is a human being himself.

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The Court: I understand, but he hasn't qualified as to knowledge of medicine or colds.

Mr. Heller: I do not think we need expert testimony on that ground; we all have colds.

The Court: I do not want to discuss that.

Q. Do you know that it is possible for a chicken with a slight cold, for it become more severe in 24 hours? A. Certainly.

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Q. It might become so severe as to make the chicken unfit for human consumption? A. I do not think it would reach the gapper stage in 24 hours.

Q. Chickens aren't always sold within 24 hours, are they? A. Oh, no.

Q. There may not be enough customers, is that right? A. You can always get a customer.

Q. You mean to give it away? A. Yes.

Q. Did you ever work in Chicago? A. No, sir.

Q. Did you ever work in any other State? A. In the poultry business?

982 Q. Any business. A. Yes, I have worked in other States.

Q. Prior to 1926? A. No.

Q. After 1926? A. Yes.

Q. For what concern? A. An electric truck company.

Q. That is between 1926 and when? A. I was out in Detroit for a month, I was down in Philadelphia for several weeks.

Q. What was the name of this concern that you say you were working for? A. The Ward Motor
983 Vehicle Company.

Q. During what years? A. 1926.

Q. And during the year 1927? A. No, I was working in the poultry business in 1927.

Q. What is the name of that concern that you worked with? A. Ward.

Q. I mean the poultry concern. A. Dexter Food Company, and Salthe Poultry Company.

Q. How long has this Dexter Food Company been in business? A. As the Dexter Food Company, about two years.

984 Q. Only been in business for two years? A. This new incorporation of ours has been in existence two years.

Q. You mean there was a corporation that was prior in existence to this one? A. That is right.

Q. So you worked for a different corporation prior to working for the Dexter Food Company, Inc.? A. Yes.

Q. What was the name of this other concern? A. The Dexter Poultry Company.

Q. Were you an officer of the Dexter Poultry Company? A. Yes, sir.

Q. Also a stockholder? A. Yes.

Q. Now, isn't it a fact that they made a composition settlement with their creditors and were bankrupt? A. That is right.

Q. Then you formed this new incorporation? A. Correct.

Q. With the same name, Dexter Food Company? A. That is right.

Q. And you have been in that business since then? A. That is right.

Q. You testified as an expert with respect to the expense of the operation of slaughter houses. 986
Will you tell the jury just what you did in your study to give the expert testimony that you gave? What did you do in order to be able to give that testimony? What do you base it on? A. Wait a minute; I did not get that first part of your question.

(Reporter repeated last question.)

A. (Continuing.) Well, as I recited before, I went through every single operation in the slaughter house.

Q. How many slaughter houses did you take 987
into consideration in giving the estimates that you gave on direct examination? A. The only estimate that I gave was the cost, that the cost was between 50—that the labor cost was about 50 to 60 per cent.

Q. How many plants or slaughter houses did you examine in order to arrive at that figure? A. That figure covers about 14 slaughter houses in the Bronx.

Q. Wholesale slaughter houses? A. Yes, some of them wholesale and retail.

Q. I beg your pardon? A. Some of them wholesale and retail.

Q. You grouped them together? A. No, some of the slaughter houses conduct both wholesale and retail business, and some wholesale business.

Q. Yes, but I say, you studied the two as one, did you not? A. That is right.

Q. And what are the names of the owners of the slaughter houses that you considered in making that estimate, and when did you consider that? A. Oh, we recently had a little meeting in the Bronx of the various slaughter house operators, in which each of them presented their
989 cost of operation and what their actual operating expense is, and it was discussed quite openly at the meeting, and all of those men up there gave us their figures that labor cost was between 50 and 60 per cent. of their total expenses.

Q. When did that meeting take place? A. Within—since the—the specific day I couldn't tell you.

Q. What month? A. About two months ago.

Q. You called a meeting together of all the slaughter house people two months ago to determine that question? A. There was a meeting
990 called. I did not call it individually. It was not called to determine just that one question.

Q. There was a meeting two months ago? A. That is right.

Q. And you were present? A. That is right.

Q. And just what was said? A. I couldn't repeat it offhand.

Q. Did one of the market men get up and say, "It cost me 50 to 60 per cent. for labor," is that how you arrived at your figure? A. Approximately. Some of them stated what their total cost was and what their labor cost was.

Q. What was the occasion for making that statement? A. We were considering merging

various companies together up there, and we wanted to know just how each one stood and what their financial condition was, and whether it would be economically sound to merge the various companies.

Q. Did you ascertain from each particular member that was present as to how many employees he has in his employ? A. We had that information at the time.

Q. Did you have that information? A. It was available for me and I saw it.

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Q. Was that in written form? A. Some of it was in written form and some of it was verbal.

Q. How many statements did you examine? A. A dozen, 12 or 13.

Q. Just what did you find? Do you remember any of the names? A. Concerning what?

Q. Concerning the number of employees. A. Offhand, I was not interested enough to remember them up until this time. As soon as we found out that mergers were out of the question, why, I kind of forgot about it, but I can give you a fair idea now of how many employees the various slaughter houses have up there.

993

Q. Those that were present, did you examine just how many employees each member had, what their wage was, how many hours they worked? A. We had that information at the time, yes.

Q. Talking about you? A. It was available to me at the time.

Q. And you read each and every statement? A. That is right, concerning those items.

Q. And you computed the percentage to be correct? A. That is right.

Q. Is that correct? A. That is right.

Q. And that was for the purpose of a merger? A. That is right.

Q. A merger with what? A. Merger of slaughter houses.

Q. For what purpose? A. Purpose that all mergers are for, to try to operate more economically.

Q. Control the prices? A. No.

Q. Control the output? A. No.

Q. Control the customers? A. No.

Q. Control the price? A. No.

995 Q. For no other purpose? A. That is all; for no illegal purpose.

Q. Well, for what lawful purpose? A. To cut down the operating expense, operate more efficiently.

Q. Is it necessary to pay 50 to 60 cents on a dollar for labor, is it necessary? A. Not in my opinion.

Q. You mean it can be cut down? A. I think so.

Q. Is there such a thing as a union in this poultry business? A. There is.

Q. You know every employer must sign a
996 contract? A. That is right.

Q. And you are bound by the wages? A. If you sign a contract.

Q. And you must sign a contract? A. No. We locked our unions out two days ago and they are back on a temporary 48-hour truce, and if they do not come to our terms Tuesday, they are going to be out.

Q. You mean you are bucking the union? A. Certainly.

Q. You want to pay less? A. No, we want to pay the original scale that we have been paying, and we don't want to pay more.

Q. Does the Code provide for paying more? A. No.

Q. Didn't your requirements require the payment of more than what the Code requires? A. Will you say that again?

Q. Under your contract with the union? A. That is right.

Q. Does that call for paying more than what the Code requires? A. Yes, it is higher than the Code wage.

Q. It is a higher wage? A. Than the Code 998
wage.

Q. In other words, all people that have signed a union contract are paying more than what the Code requires? A. Some of them have union employees that are about the minimum wage of the Code. The Code only specifies a minimum wage.

Q. Right. Now, your union contract is in excess of that minimum wage, is it not? A. I would not say it is in excess. I would put it this way: We had a contract where our shochtin were on a weekly wage. The Commissioner of 999
New York City appointed Judge Rosalsky as a mediator, at the request of the Rabbinical Board of New York, to try to control output of shochtin so that they should not kill so much poultry, and put more of them to work. So Judge Rosalsky as mediator, handed down his decision that shochtin should be paid at the rate of half a cent a pound, with a minimum wage of $45, and not to slaughter in excess of 12,000 pounds a week. Our shochtin have been slaughtering more than that. Well, to accept that decision it would increase our wages. It would not increase the wages per man, but it

1000 would increase the cost of slaughtering the total volume of poundage; in other words, instead of three men, we would have to employ five and a half or six.

Q. And you have a serious objection to that? A. And we have an objection to it.

Q. In other words, you do not want to conform with Judge Rosalsky's ruling, is that correct, if possible? A. That is right. At least—I will put it this way, we have not, up to this time.

1001 Q. As a matter of fact, it would be a drain on your pocketbook in order to conform with that requirement? A. Naturally, when your expense goes up it is more of a drain.

Q. And do you know that a similar ruling was made by Mr. Peterson, that you should pay them a half a cent a pound? A. Mr. Peterson does not control our pocketbook.

Q. But didn't he rule that they are entitled to that one-half a cent a pound? A. No; he merely stepped in as an arbitrator.

Q. And didn't he find for the shochtin? A.

1002 No.

Mr. Rice: If your Honor please, I have no objection to proving this witness' character and veracity thoroughly, but I cannot conceive what this shochtin controversy has to do with the issues of this case.

The Court: No.

Mr. Rice: Or as to the veracity or integrity of the witness.

The Court: I think that is so. We are not trying out that particular phase.

1003

Mr. Heller: Here is my object in questioning——

The Court: I know, but you are talking about some union difference, difference between the union and the employees, which has been either arbitrated or discussed, and we are not concerned with that at all.

Mr. Heller: Coming up to the next point——

The Court: Get to your next point.

Mr. Heller: I am right up to it now.

1004

The Court: But that point is passed. It has nothing to do with this case.

Mr. Heller: It is connected with the next question.

The Court: I do not get that at all.

Gentlemen of the Jury, do not allow anybody to talk to you about the case, do not discuss it between yourselves, and do not form any opinion until it is finally submitted to you. Return at two o'clock.

(Recess until 2 P. M.)

1005

(Met pursuant to adjournment at 2:00 P. M.; present as before.)

THEODORE J. TOTTIS, resumed the stand.

Cross examination (continued) by Mr. Heller:

Q. Can you give us the names of those market people whose records you have inspected for the purpose of ascertaining the costs of labor? A. I have either inspected them or received them verbally, and yes, I can give you their names.

1006 Q. Will you do so, please? A. Ornstein & Bromberg——

Q. What is the address? A. I cannot tell you the addresses.

Q. In the Borough of the Bronx? A. Yes, in the Borough of Bronx. Van Ness Poultry Company, S. & K. Poultry Company, Bathgate Live Poultry, Intervale Live Poultry, Manne Brothers, Sokoloff, Siegal and Zarkin, S. S. & B., Panish, and Salthe.

1007 Q. You say you received that information verbally from them? A. I either saw the figures, some of the figures were prepared by accountants, some prepared by themselves, and some were verbal.

Q. And you did not personally check the accuracy of such figures? A. No, I did not.

Q. You took them for whatever they were worth? A. Yes, because they were in line and ran fairly consistent.

Q. The only figures you received were from people doing business in the Borough of the Bronx? A. That is right.

1008 Q. That is two months ago, approximately? A. That is right.

Q. Have you analyzed the cost of operating a slaughter house in the Borough of Brooklyn? A. No.

Q. Is it possible that there may be a little variation between the Bronx and Brooklyn? A. It is possible.

Q. Is it possible that there may be a variation in salaries as far as the people are concerned, that one person does not give the same salary as another, is that right? A. Certainly.

Q. One employer may pay his bookkeeper $20 and another employer may pay his bookkeeper $40, is that right? A. That is correct.

Q. Some of the executives or members of the firm may draw $35 a week, and others $70 a week? A. That is correct.

Q. All of these factors must be taken into consideration as to the cost of overhead and operation of the plant? A. That is right.

Q. And there is a distinction between the cost of operating a slaughter house and the cost of 1010
operating a commission merchant's business? A. They are two different types of dealers entirely.

Q. In other words, when you gave your opinion that when someone pays less for salaries than another, did you have in mind a concern known as a slaughter house or as a commission merchant? A. Slaughter house.

Q. There is no question about that, that the price is fixed by the commission merchant, is there? A. What is that?

Q. Of poultry? A. That is a much mooted question, as to how the price of poultry is ar- 1011
rived at.

Q. Isn't it a fact that the commission merchant asks a certain price, and if a slaughter house wants the poultry he must pay that price? A. He may not sell it for a fixed particular price, he may sell it at a cent under, or maybe two cents below the market, and a special price is arrived at when the poultry is bought.

Q. But the penny over or under the market price is the market price which is fixed by the commission merchant? A. It isn't fixed by the commission merchant.

1012 Q. Do you really know how prices are fixed? A. Yes.

Q. Let us hear how prices are fixed, who fixes them. A. The price is made between the buyer and the seller.

Q. Are you sure that is the correct way of determining the price? A. That is the way it is done at the present time.

Q. Is that the way it was done a month ago? A. Yes, sir.

1013 Q. Is that the way it was done a year ago? A. Yes, sir.

Q. Let me read to you from a Government bulletin known as "The wholesale marketing of live poultry in New York City," the following statement, and tell me whether that isn't the way the price is fixed: "The method of arriving at wholesale prices of live poultry on this market is briefly as follows: A representative of a private price reporting agency of high standing visits West Washington Market between 12 o'clock noon and 1 P. M. each day of the week except

1014 Saturday and Sunday for the purpose of obtaining from the members of the trade a report of their morning's transactions"——

Mr. Rice: What page are you reading from?

Mr. Heller: Page 29.

Mr. Rice: What date is that pamphlet?

Mr. Heller: May, 1929.

Mr. Rice: 1929?

Mr. Heller: Yes, that is the date of this pamphlet.

Mr. Rice: Thank you.

Q. (Continuing.) —"He is usually met by a group of buyers and sellers who surround him,

and the more aggressive ones immediately try to impress him with their ideas of what the prices for the different classes of poultry should be. Sometimes the ardor manifested in making their point takes on near mob proportions, but such extreme demonstrations are not frequent, and the dickering although usually loud and boisterous, is ordinarily orderly. Every dealer is likely to have some personal motive for the position he takes in the interpretation of the market or for the price he reports for the transactions 1016
which he may claim he has made because of his peculiar commitments, he exerts himself to have the price of a given class of poultry quoted higher or lower as the circumstances may suggest."

Is that a correct statement as to how prices were fixed in May, 1929? A. I absolutely disagree with that.

Q. You disagree with that? A. Absolutely.

Q. That never took place? A. Not that way.

Q. And it does not take place in the same manner? A. No.

Q. You are positive about that? A. Positive. 1017

Q. You say then that the prices are fixed by the buyer and seller? A. That is right.

Q. Do you mean it is fixed by an economic law, such as the law of supply and demand? A. Yes.

Q. In other words, when there is a greater supply the price goes down? A. That is right.

Q. And when there is a scarcity of supply the price goes up? A. Naturally.

Q. And the commission merchant knows how much he has on hand, is that correct? A. Yes.

Q. If he is over-stocked he is glad to get rid of it at any price? A. Not necessarily, because the other commission merchants may be short. It is

1018 the entire market that should be over-supplied and not an individual commission merchant.

Q. That is what we are talking about, the entire market, generally speaking. If the market is over-flooded or has an excess of supply the price goes down? A. That is right.

Q. He is glad to sell it for whatever he can get? A. I would not say that he would sell for whatever he could.

Q. Rather than destroy the poultry, he is glad to get rid of it? A. No, he can carry it in the
1019 car on the track for a day, if the car is healthy, or two days.

Q. And if the supply is just as great the next day and there is a greater demand, the price still would go down? A. If he can estimate what demand is going to be made—what the demand is going to be two days hence——

Q. So—— A. It varies according to conditions.

Q. You may proceed. I will take whatever explanation you have to say for an answer. A. The conditions are variable in the live poultry
1020 market from day to day and from hour to hour. I have seen occasions when the market——

Q. Just a minute. I am not interested in your personal transactions.

The Court: He has answered you now. That is the answer.

Mr. Heller: I beg your pardon?

The Court: He has answered you. You do not need to take the special occasion.

Q. How often do chickens come into the city? A. You mean on car and truck?

Q. That is right. A. General movement?

Q. Every day. A. At the present time, five days a week.

Q. Once a day? A. How do you mean? They continue to come in each day.

Q. All day long? A. That is right, within reasonable working hours.

Q. But all day long and every day of a five-day week, is that right? A. Yes, during business hours.

Q. And the commission merchant places his orders for those carloads, does he not? A. Yes, he places his orders. 1022

Q. How long before the chickens come into the city does he place his order, how long before? A. Length of time it requires to transport it in.

Q. Does he place an order two days in advance? A. I have seen them placed three hours in advance and I have seen cars arrive from shippers that were consigned to nobody and after the car arrived tried to get a receiver to handle the poultry,—the receiver handled it for them.

Q. Are these individual cases you are talking about? A. It is conditions that occur every day continually. 1023

Q. Do merchants, generally speaking, out of the 21 commission merchants, do 10 of them or say 15 of them place their orders two days in advance for their needs? A. They don't place their orders that way. If poultry is received on a consignment basis, the shipper has a particular receiver he does business with. When he accumulates a car of poultry, he ships it so it will arrive in New York any day except Saturday or Sunday.

Q. How many of the 21 commission merchants buy their merchandise on consignment? A. That

figure nobody could answer for you, because it is your own personal business.

Q. Don't go into speeches. Just give me your answer. You don't know; no one knows? A. No one knows.

Q. How many buy on their own credit of the 21? A. No one knows that answer, either.

Q. You would have to go from merchant to merchant to ascertain whether or not a particular shipment came in on consignment or to his credit, is that correct? A. Yes, if you wanted

1025 to know you would have to ask him.

Q. Have you gone from merchant to merchant and ascertained how many shipments came in on consignment and how many came in on their own credit? A. Not by asking the commission merchant, but I have ascertained that.

Q. Please, just answer the question.

The Court: You asked him if he ascertained it and he is answering you that he had not ascertained it by going to the merchants, but he has ascertained it in some

1026 other way.

Q. How did you ascertain it? A. By looking at the waybills of the railroad.

Q. You have access to all the waybills of the railroad companies? A. At times.

Q. You have such access? A. When I have been interested in it.

Q. How long ago? A. Oh, at least once a week.

Q. Every week you go down to the railroad and you look at the consignee's bill, is that correct? A. I do.

Q. And what are the railroad companies you go to? A. Various railroads that ship live poultry where I have access.

Q. Please mention their names and addresses. A. I don't care to.

Mr. Heller: I insist that he give an answer, your Honor.

The Court: What is it you want?

Mr. Heller: I want him to give me the names of the railroad companies, and addresses he goes to and examines these 1028 papers.

The Court: Oh, he will have to tell you what railroad companies.

The Witness: New York Central.

Q. That is the only railroad you go to? A. (No answer.)

Q. Have you received permission from the commission merchants to examine those consignee bills? A. No.

Q. Have you received that from any official of the New York Central? A. No. 1029

Q. Have you somebody in there that is willing to hand you that information? A. No.

Q. You examine it yourself? A. Yes.

Q. What particular place do you examine that? A. Oh, various places. I don't remember them offhand.

Q. Did you examine them last week? A. Yes; I saw them last week.

Q. What place last week did you examine them at? A. I don't know.

Q. You don't know? A. No.

Q. Two weeks ago? A. No.

Q. Three weeks ago? A. No.

1030

The Court: Don't shake your head.
The Witness: The answer is no.

Q. For what purpose do you go down to examine these bills? A. To find out whether it is paid poultry or commission poultry.

Q. In what way does it affect your business? A. Just curiosity on my part to know what is going on in the industry.

Q. Did you make an arrangement with anybody in particular with the Government to testify
1031 here? A. How do you mean, did I make arrangements with them? I have been requested to.

Q. Yes. How did they come to know about you? A. Oh, you will have to ask them.

Q. In other words, they communicated with you, is that correct? A. That is right.

Q. And wanted you to testify here? A. Well, I wasn't told I would testify here. They wanted to know if I would appear before a Grand Jury and explain to them how live poultry is handled through the United States and the Metropolitan District.

1032 Q. And for that purpose you studied certain records, is that correct? A. No, I studied them for my information for normal course of business.

Q. For your course of business? A. To have a general knowledge of the business.

Q. And you are in the Bronx, are you not? A. That is right.

Q. You have no place in West Washington Market? A. No.

Q. How many are in West Washington Market, commission merchants, out of the 21? A. Oh, all but three.

Q. Three are scattered elsewhere? A. Yes.

Q. One in the Bronx, that is your concern? A. Two in the Bronx.

Q. Two in the Bronx? A. That is right.

Q. And one elsewhere? A. Yes.

Q. Is it possible for a merchant to sell merchandise at a smaller price and still sell the good quality merchandise that other merchants get more for? A. I did not get that question clear.

Q. Is it possible for a merchant to sell a chicken of standard size and of good quality for a lesser sum than another merchant, is it possible? A. Certainly. Anybody can sell at any price. 1034

Q. Any man can throw his money out, if he so desires, is that correct? A. That is correct.

Q. And if a man pays less rent and less money for his overhead expenses, it is possible for him to undersell the next competitor, may he not? A. Certainly.

Q. And you could not say definitely that the only element which you must take into consideration in determining whether or not good or bad chickens come into the city is the element of underselling by one competitor as against another? A. That is right. 1035

Q. In other words, there are other elements to be taken into consideration, are there not? A. Besides cost of merchandise, certainly.

Q. A man can lose money if he so desires? A. Certainly.

Q. That would not affect the question of the quantity of culls that may come into the city? A. Yes, that is correct.

Q. Wouldn't you say that the proper regulation with reference to the selection of chickens

1036 should be at the source rather than at the place of sale? A. Absolutely no.

Q. You say no? A. And if I may explain why——

Q. No, I will let you explain later. Is it possible to grade the chickens at the place of shipment? A. In some cases.

Q. Why is it impossible to grade them in other places? A. Because the volume of the particular shipping point may be too small. That works out this way: Certain shipping points you can

1037 load a full car in a day or half a day, or higher in flush season, as high as four cars in a single day; there are other shipping points where the poultry moves so slowly that the car has to come along, along the railroad, and may have four or five stops at different points in order to make up the carload. The stuff is brought in by small hucksters to the car door, and if there are any poultry rejected, they would have no place to take them at the present time.

Q. Let me ask you this: Give me one State that you buy from. A. Ohio.

1038 Q. You have a representative in Ohio? A. No, sir.

Q. Do you have somebody representing you there? A. No, sir.

Q. You buy directly from someone? A. Directly from the shipper. He does not represent us, he sells to us.

Q. On occasions you have gone down to see him? A. That is right.

Q. Is there anything to prevent you from asking him to grade the chickens according to weight? A. Nothing whatever.

Q. You can make such a demand? A. Certainly.

Q. Well, wouldn't that be the proper place to grade the chickens? A. For a man that could ship a full carload out of one point, it would be, and probably that is where they will be graded in the future. If it was along a railroad or in a part of the country where they cannot ship carloads, that is, carload lots, they would have trouble grading that way; they would have to take them to some concentrating point, or some place 1040 where they can put the rejects out at any specified point along the roads.

Q. Now, how many average carloads does a commission merchant buy in a day? A. You mean cars that come into New York in a day?

Q. No, what is the average quantity per pound that the commission merchant purchased day by day? A. There is no average in New York.

Q. Well, does the commission merchant buy one carload of poultry? A. That I cannot tell you; nobody knows how much they buy.

Q. Well, how many carloads do you receive 1041 daily? A. We receive an average of a car a day.

Q. And in this particular case it is possible to grade poultry? A. Yes.

Q. Now, isn't it a fact that most commission merchants buy at least one or more carloads per day? A. Half of them do.

Q. And half of them buy more than one or two? A. Half of them, they will run as high as seven and ten and twenty in one day.

Q. And they can insist on grading the poultry, if they so desire? A. Yes.

Q. So that when poultry comes into the State, that is, if you receive a carload of poultry, it is

your wish and desire to sell that carload, is it not? A. Yes.

Q. Now, when a wholesale slaughter house man comes to buy it, he must buy so many coops? A. As many as he wants to.

Q. He does not segregate each particular coop as to poundage, as to weight, as to quality, does he? A. I don't get your question.

Q. Well, how many chickens are in a coop? A. Forty to 60.

1043 Q. And if a man wants one coop, he gets a particular coop with 40 chickens in it? A. Yes.

Q. And those 40 chickens may be all the weight —that is, some 5 pounds, some 3 pounds, and some 4 pounds? A. That is correct.

Q. And he buys them as is? A. That is right.

Q. And then he brings it to the slaughter house? A. That is right.

Q. And then when someone comes in and wants to buy five chickens from the slaughter house man, he must stick his hand in and take the first five, is that correct? A. Yes.

1044 Q. And that is what we mean by straight killing? A. Yes.

Q. Now, if he should pick five 5-pounders, that may affect your business, may it not? A. I don't see how.

Q. Well, he will be left with the others? A. If he grabs five chickens out of a coop and they are all 5-pounders, that would mean that it was a uniform coop.

Q. Well, suppose he deliberately selects five chickens at 5 pounds apiece because one of his butchers wants that, he might be left with five that have only 3 or 4 pounds on them? A. Yes; that would affect our business, because our cus-

tomers would demand that grading on weight by us to compete with his business.

Q. You say that he must take the coop as it is? A. Yes, sir.

Q. And you require him to sell it as it is? A. Yes, sir.

Q. Now, that particular customer of his wants five chickens at 5 pounds apiece, and under this Code he is not permitted to select them, and then he must lose the sale, is that correct? A. No, that is not so, because if the customer could not buy it from anybody else, he won't lose the 1046
sale; he will only lose the sale if the customer knows that he can go to his competitor and buy it by size.

Q. Are you a married man? A. Yes, sir.

Q. Now, do you know from your experience as a married man that a housewife may desire on one occasion a 5-pound chicken and on another occasion a 3½-pound chicken? A. That is right.

Q. When she comes in and asks for a 5-pound chicken, she doesn't want a 3-pound chicken, is that correct? A. That is correct.

Q. And if the butcher purchases a limited 1047
quantity from the wholesale slaughter house and he has a special customer that insists on a certain weight chickens, you must satisfy such customer if you want to make a sale, is that correct? A. If you can make the sale profitably, yes, sir. The thing for a butcher to do, if he has a special order, under straight killing, the butcher would go to the chicken dealer if he is in need of a few heads of special size, a chicken dealer that handles a quantity of chickens. That is the practice that we used to have in New York years ago. The small butcher who wants 2- or 3- or 4- or

5-pound birds, he would go to a chicken dealer who handled a very large volume of business, and he would be able to supply him with the size.

Q. Now, do you justify the selection of chickens, if price justifies it, or don't you justify it at all? A. I don't get that question.

Q. If a butcher comes in and wants five 5-pounders would you justify selling him, if the wholesale man can get a better price than if he did not have to make a selection? A. My answer is this: that we could not attempt to do it on
1049 account of the provision in the Code regarding straight killing.

Q. That is the reason you don't want to justify it? A. That is right.

Q. And you insisted on selling your coops as is? A. Yes.

Q. And you don't worry what happens to the slaughter house man? A. We are also slaughter house men, and we have to worry about that also.

Q. Your concern has a subsidiary that operates one slaughter house, is that right? A. That is right.

1050 Q. And there is some connection between the two? A. That is right.

Q. And what you do not dispose of in one place you dispose of in another? A. That is right.

Q. But what I am talking about is the concern that is not a commission merchant or has no branch known as a slaughter house market, I am talking about that concern. A. I am talking from a slaughter house point of view.

Q. In other words, in your opinion, you would rather have the slaughter house man lose the sale than let him pick five 5-pound chickens? A. Listen, you cannot lose the sale unless the man

has another slaughter house to go to where he can get it graded for size. If the customer wants a chicken and they cannot get it at 5 pounds, they will take 4½ or 5½ pounds, they won't say, "Because I cannot get a 5-pound chicken, I am not going to have chicken today."

Q. Suppose another slaughter house man is willing to sell it? A. Then I would lose the sale.

Q. And if the butcher has five customers that want a chicken, each weighing 5 pounds, he would insist on getting five chickens of 5 pounds each? 1052
A. Yes.

Q. And if he could not get them he would lose the sale? A. He would get them. If not from a slaughter house, he would get them from the chicken dealer.

Q. Well, if he did not get them he would lose the sale? A. If he was a salesman he would sell 5½-pound chicken.

Q. Would you buy a size 6 hat if you wanted a size 6½? A. No, but you cannot eat a hat, but you can eat a chicken. I have gone to a store and wanted a 5-pound chicken and taken a 5½-pound chicken, but I would not take a larger 1053
size hat or larger size shoes.

Q. Wouldn't you draw a line, that if a man did not have any more money than for a 5-pound chicken—— A. Then he would take 4½ pounds

Q. Well, suppose he needs five. A. He cannot buy it. He can buy a 4½-pound chicken.

Q. When you buy your chickens, that is the commission merchant, do you fix the price before you purchase the chickens or after you get them into your possession? A. The commission merchant sells on consignment.

1054 Q. I mean those they sell on their own credit. A. You mean those that sell their own bought poultry?

Q. That is right? A. Will you ask the question again?

The Court: Read it.

(Question repeated by the reporter.)

A. Naturally, the man gets them in his possession and must have them available for inspection by the buyer before he can sell them or set
1055 the price.

Q. Then he has already made the agreement as to price with the seller, has he not? A. Already when?

Q. The commission merchant who buys it to his own credit. A. Yes.

Q. Before that poultry gets into his possession in New York City, is that right? A. That is right.

Q. He has already made an agreement as to the price, has he not, with the shipper? A. That
1056 is right.

Q. So that in all cases merchandise is shipped from other States to the City of New York, on credit, the price is determined before shipment? A. I do not get your "on credit."

Q. There is a difference between consignment and credit? A. There is consignment and outright buying, that is the way we refer to it in the trade.

Q. Then let me rephrase the question. In all cases of outright buying, all these purchases that come into New York City or New York State, in all those instances the price is already determined before the poultry comes in? A. That is right.

Q. It is only in cases of consignment and depending upon the agreement between the parties that a price may be determined in the City of New York? A. That is right.

Q. And if the shipper sends poultry on consignment and specifies the price, then that price governs? A. Well, if he specifies the price, then isn't consignment; consignment is on the market, whatever the market is made without any specification as to price.

Q. Do you consider that as a definition of consignment? A. Yes; consignment is on a condition basis. 1058

Q. In the poultry industry? A. Yes, sir.

Q. Is that limited to the poultry industry? A. I do not know whether it is limited to the poultry industry or not. They consign food products, food products are handled the same way, shipped in to be sold on the market; that is consignment.

Q. And without any specification as to a price? A. Without specification of the price.

Q. When you ship merchandise on consignment, do you specify the price at which it is sold? A. Then it is shipped on a guaranteed basis when you do that. 1059

Q. Then there is another classification, is that it? A. That is right.

Q. One portion of the poultry coming into New York comes in on consignment but on a guaranteed basis, is that correct? A. Yes. If I may interrupt, I would like to explain the various ways that poultry is shipped in, and the various deals that a commission man may have with a shipper. You have a straight consignment basis, which is a straight commission; the commission man handles the poultry on a guaranteed basis;

1060 for instance, he would solicit a car of poultry and guarantee the man 18 cents; if the market goes to 17 cents, nevertheless, he gets his 18 cents. If the market goes to 19 cents, then he gets 19 cents. We handle poultry on the basis of a guaranteed price by the commission, and also buy track New York, and also buy track f.o.b. shipping point. Those are the various ways that live poultry is shipped to New York.

Q. So that in the case where it is shipped on
1061 an outright sale or on a guaranteed basis, the price is determined at the point of sale? A. That is the price to the commission man.

Q. That is right. A. Not to the ultimate buyer.

Q. That is correct, isn't it? A. Yes.

Q. Then he sells it in New York City? A. That is right.

Q. And the price will vary from day to day? A. Depending on the available supply and demand.

Q. And isn't that the sole factor? A. Supply and demand?

1062 Q. That is correct, isn't it? A. That is right.

Q. Do you buy any of your merchandise at West Washington Market? A. We have been recently.

Q. When you are short? A. That is right.

Q. That is the only time you buy it there, is that correct? A. Or when there is a particular occasion that we need cheaper poultry; we go downtown to buy cheap poultry.

Q. When you need dearer poultry you get it elsewhere? A. We bring it in ourselves on a consignment basis. In other words, all the poultry that our particular company brings in on a consignment basis is top market poultry. If we

develop a demand for cheaper poultry on account of competitive conditions, we go downtown to buy our cheaper poultry.

Q. And these competitive conditions arrive from day to day? A. Sometimes, not necessarily always.

Q. Well, what do you mean by competitive conditions? A. Well, I can best cite that with an example. We have a competitor that has some very poor poultry, and he will call up one of our city customers and say here, we may be charging 20 cents for hens, and he will say, I have some hens and I will kill them for 17 cents. So the dealer then comes up to us and asks if we have got some 17-cent poultry. We will say, no, but today is Thursday and our buyer is down at the railroad and we will have them up in a couple of hours for you. We go out of our way to buy cheaper poultry so we may be on a competitive basis for cheaper poultry, but our particular company's policy is to handle top market poultry only. 1064

Q. By a cheaper poultry you mean chickens that are thinner? A. Yes, sir. 1065

Q. They can be used for human consumption? A. Yes, absolutely.

Q. And the price that a customer is going to pay depends on the class of person, does it not? A poor person would like to pay less, and a person who has better means would like to pay more, isn't that correct? A. It doesn't work out all of the time, sometimes the wealthier ones are the toughest ones and want to buy cheapest.

Q. Would you say that poor people eat chicken every day? A. As often as they can afford it.

1066 Q. Then you would say that a consumption of the number of chickens or the pounds of poultry in the poultry industry depends on the ability to pay for it, doesn't it? A. To some extent.

Q. If a person is unemployed he is not apt to buy chickens? A. Not so readily.

Q. And if a great number of people are unemployed less chickens might be sold? A. Well, I am talking about live poultry particularly——

Q. Yes, we are talking about live poultry. A. Yes.

1067 Q. So that the economic factor of unemployment must be considered in determining whether we sell or consume more or less chickens, isn't that correct? A. Yes, absolutely.

Q. And if business is bad elsewhere it is bad in the poultry line, is it not? A. That is right.

Q. Do you know what the price ratio was a year ago at Chicago and New York? A. Between three and three and a half cents.

Q. Is it the same this year? A. No, it has dropped about a cent on account of difference in handling charges at the present time on the

1068 Chicago end.

Q. You mean they are less now than they were last year? A. Yes, they have a different basis to work on.

Q. Leaving out the question of the reduction in handling charges, would you say that it is approximately the same as last year? A. Within a half a cent most of the time.

Q. The same the year before? A. I wouldn't remember that; I am more interested in the future, I am interested in what is going to happen.

Q. But for the last two years you would say that the price relationship was approximately the

same? A. Within a half a cent or so most of the time.

Q. And isn't it a fact that Chicago is more apt to be the price-determining factor than New York, in view of the fact that that is a central point? A. Absolutely not.

Q. You say no? A. Absolutely not.

Q. If there is a greater demand in Chicago for chickens, are the shippers more apt to dump them in Chicago than New York? A. It will be a temporary condition. It may last for a day or two. 1070

Q. There may be such a condition? A. Very temporarily.

Q. But there may be such a condition? A. Very temporarily.

Q. You are not in Chicago every day, are you? A. No, sir, but I know the Chicago market every day.

Q. Can you tell me what effect wage rate has upon the total amount of poultry that comes into any definite locality? A. That is an awfully large question. I could not attempt to answer. I do not even know what you mean by it. 1071

Q. You have stated on direct examination that where a merchant in the Borough of Brooklyn or the Borough of Bronx, pays less to his employees, that that fact would have some effect on the condition of the market, did you not? A. Yes.

Q. Did you mean the slaughter house market or the live poultry—— A. Live poultry market.

Q. (Continuing) —in New York City? A. The live poultry market.

Q. Can you tell us how the amount of wages paid to employees in a particular market in the Borough of Brooklyn would affect the entire

1072 *Theodore J. Tottis—By Govt.—Cross*

price structure or the entire market of the live poultry industry? A. I can explain it best with an example again. If we have a competitor, and we have a competitor in Mount Vernon, and he is operating with non-union help, it enables him to sell poultry normally cheaper than we do, so it once again becomes necessary for us to go downtown and try to buy cheaper poultry to compete with his prices.

1073 Q. Are you taking into consideration quality of the poultry the man that pays less wages sells when you make that statement? A. Yes, for this reason: He sells strictly on a price basis, and we have salesmen going out, and our salesmen will certainly make up for the shortcomings of quality with a little salesmanship, and they will sell our poultry just as well as he will sell his.

1074 Q. Let me give you a simple example: A market man paying non-union wages, that is, less than a union concern pays, can afford to sell the same quality of merchandise, can he not, for less price than a person paying union wages selling the same quality of merchandise? A. The answer to that is, yes.

Q. So that necessarily does not mean that when a man underpays wages, he must necessarily sell inferior quality? A. No, but he places his competitor in a position where he has to go out and buy an inferior quality to compete with him on the price basis.

Q. Are you assuming that the public is so gullible that they will take an inferior grade in place—— A. Not so gullible.

Q. (Continuing.) —of a superior grade? A. But they don't know poultry so well.

Q. You mean the average housewife does not know poultry? A. So well. I did not say they did not know anything about it.

Q. Isn't it a fact that the average housewife feels chickens to see whether they are fatty or otherwise? A. That does not tell the whole story, just by feeling.

Q. Can they do it? Do they do it? A. Some of them who know poultry well can do it, but a large proportion of them don't.

Q. You mean customers? A. Yes. 1076

Q. You mean they take what the butcher gives them? A. In some cases.

Q. Have you observed many stores? A. Yes, sir, a lot of stores.

Q. In other words, you spend your time between retail stores, market people, and commission merchants—— A. And the country.

Q. And the country. You observe the New York Central Railroad statistics? A. That is right.

Q. You are all over? A. I keep moving all day long. That is my job. 1077

Q. Do you know that less chickens per pound came in in this year, beginning January to September, than the corresponding period of time of last year? A. What do you mean, less chickens per pound?

Q. Consisting of freight, expressed and trucked chickens? A. I know that up until last Saturday, New York was 200 carloads behind last year.

Q. That is correct, isn't it? A. Yes.

Q. That is in spite of the fact of the Code for the poultry industry? A. That is right.

Q. So your statement that the Code affected the quantity of poultry that came into the State of New York during its existence is not correct?

1078 A. Oh, I disagree with you. What percentage of that was New York consumption behind last year up until the inception of the Code and since the inception of the Code——

Q. Do you know what it is? A. Offhand, accurately, no.

Q. Do you know approximately what it is? A. It has been slightly better up until the Jewish holidays, around the second week in September.

Q. Isn't it a fact that in the month of September is the only month that the amount of poultry 1079 increased per pound, and that is because of the holidays coming in in September, or most of them? A. That is right.

Q. Do you know the percentages or the number of pounds of chickens that came in each and every month during this year and the corresponding months of last year? A. Will you repeat that?

(Reporter repeated last question.)

A. What do you mean, percentage of chickens, 1080 ratio between fowl and chickens?

Mr. Heller: I will withdraw the question.

Q. I will make it simpler for you; Do you know the exact amount of poultry, freight, expressed and trucked, that came into the City of New York each and every month during this year and each and every month of the past year? A. Oh, I don't make any attempt to memorize statistics.

Q. Did you examine the statistics? A. Yes.

Q. Do you know? A. I know that for about the first three or four months our consumption was behind last year. From then on up until the 1st

of September it was ahead of last year, and since the holidays it has fallen behind again.

Q. Let me read to you from the Government statistics. I read to you from a copy of Government's Exhibit 12. A. I have not seen that, sir.

Q. I will read it to you. A. Is that freight or truck or combined?

Q. All three together. Your statement was that the first three months—— A. First three or four months——

Q. —was a drop? A. Right. 1082

Q. This year, is that correct? A. Yes.

Mr. Rice: If your Honor please, may the witness see the exhibit?

Mr. Heller: I will show the exhibit to the witness. I have no objection.

Q. Now, look for January of this year and January of last year. I want to ask you a question. Did we get more this year or less?. In the second column. A. More.

Q. Then your statement before was incorrect, was it not? A. I am talking about the period. 1083 I make no attempt to memorize month by month. I am not a statistical bureau.

Q. And the second month, was it more or less? A. Less.

Q. And in the third month? A. Slightly more.

Q. And will you look—— A. Wait a minute. in the fourth month was considerably less, so the total for three or four months was under last year.

Q. All right. Now figure them all up together for the eight months. No, wait a minute.

Q. Is it more or less? A. My statement was at the present time, until last Saturday, New

1084 York was 200 carloads under last year. I said the first four months were under last year and in the next four months or three months it has picked up considerably over last year, and the slump has come in about the last month.

Q. And last month, as a matter of fact, was the month of the Jewish holidays, is that correct, that is September? A. Well, the last month, the statistics, as I go by, Ernie Barry's quotations, which are issued every Saturday, in which they give freight car unloadings and the express
1085 and truck receipts for the past week, the previous week and the corresponding week last year, and that is what I am basing my figure on, they do not necessarily check very accurately with these.

Q. You mean his are different than these? A. They are not exactly the same, there may be a variation in a month of a half a dozen cars.

Q. And during the entire eight months' period we received less this year than last year? A. That's right.

1086 Q. And five of those eight months were months when the Code of the industry was in full force and effect? A. I would not put it just that way; the first four months when we did not have the Code, we were behind the last year and when the Code first went into effect we were slightly ahead of last year.

Q. During the entire period of five months while the Code was in effect were we ahead or behind? A. I did not segregate since the Code or before the Code; I went by the course of the year up until the present time.

Q. Am I correct in saying that during the first five months we received 4,174 this year, and

4,256 of last year? A. I will get a pencil out and add them up if you want me to.

Q. You haven't made any estimate yourself? A. No, my opinion as I go along from time to time, I am making no attempt to regulate any statistics or recall statistics that I looked at six months or a year ago.

Q. But there is no question in your mind now that during the eight months of this year we received less than during the same period of eight months last year? A. According to these 1088 figures that is so.

Q. And you are willing to take that as true? A. Yes.

Q. That is all. Just a minute.

The Court: You were referring to what exhibit, Mr. Heller?

Mr. Rice: He was referring to Government's Exhibit 12, your Honor.

Q. Are you familiar with the general business conditions in all the industries during the past two or three years? A. I am not an economist 1089 by any means.

Q. In other words, you confined yourself only to the live poultry industry? A. Plus general reading.

Q. Well, do you know that the condition in this industry runs proportionately as to any other industry as to wages and as to business? A. I don't understand how you mean that.

Q. Well, if there was a great decrease in employment in other industries during the past three years would not there be a corresponding decrease in employment in this industry? A.

1090 There would be to some extent, but not corresponding.

Q. Have you computed any table which will enable you to testify just what the economic condition of the entire United States had in this particular industry? A. I am not an economist.

Q. Well, as to wages and as to business failures. A. I don't profess to be an economist.

Q. Well, can you really attribute any condition honestly to the trade provisions of the Code in the live poultry industry? A. To this extent;

1091 that if your poultry consumption dropped off 23,000,000 pounds last year, it was not due solely to the economic condition because the consumers of dressed poultry was just as seriously affected as the consumers of live poultry, and dressed poultry increased approximately, in consumption last year, as the live poultry industry lost.

Q. Well, where do you get your figures that we dropped 23,000,000? A. Approximately, I said.

Q. But where did you get them from? A. They

1092 are B. A. I. figures, I am talking 1933 against 1932.

Q. You say now there was a drop in consumption in the year 1933 of—— A. Of live poultry in the metropolitan district.

Q. You say that? A. Yes.

Q. Definitely? A. Yes.

Q. How many pounds? A. Somewhere around twenty or twenty-five millions.

Q. Twenty or twenty-five million? A. That is not in last year alone, I am talking from about the peak of consumption to last year, that is around 1930 or '31 to last year, from the time the slump set in.

Q. And you now claim that between 1931 and 1933 there was a drop of how many pounds? A. In the twenties, twenty to twenty-five.

Q. Over that period of time? A. That's right.

Q. I mean you have averaged them up? A. I did not.

Q. You added them year by year? A. No.

Q. Well, how do you arrive at that figure? A. The difference between the consumption in 1933 and the difference in consumption in 1930; that the tendency of the live poultry consumption has been downward and the tendency of the dressed poultry consumption has been upward, to practically the same amount. 1094

Q. Are you familiar with the Government statistics of the United States Department of Agriculture, the Bureau or Agricultural Economics in Washington, D. C.? A. Yes.

Q. Have you read them? A. Yes.

Q. Well, will you take this statement as correct; the number of chickens sold from farms in 1933 were 387,784,000, being 4 3/10ths per cent. more than in 1932, and 9 4/10ths per cent. more than in 1931? A. What has that to do with the live poultry industry. I am talking about our conditions here. I don't know how much poultry is on the farms throughout the United States. 1095

Q. Do you mean to convey to the jury that in New York City alone there was a drop of so many millions of pounds? A. From our peak of consumption, yes.

Q. Now what was the amount of the consumption in 1931? A. I don't remember statistics, I do not attempt to bear them in mind, but I know that the trend was downward.

1096 Q. Well, how much did we consume in 1932? A. I don't remember the statistics.

Mr. Rice: If your Honor pleases, I might in fairness inform counsel that the Government is going to offer full statistics on the drop in consumption.

Mr. Heller: He is an expert and I would like to examine him if you don't mind.

The Court: He has a right to cross
1097 examine, Mr. Rice.

Q. Do you know that the difference between 1933 and 1932 was only 748 carloads? A. How many pounds is that?

Q. How many pounds in a carload? A. 18,000.

Q. Multiply that by 748 and might not the fact that people had no money last year have some bearing on the question of whether we consumed more or less poultry? A. Not unless you knew the increase in the consumption of dressed poultry.

1098 Q. Is it cheaper? A. No.

Q. It would cost more? A. Yes.

Q. Some people's tastes change, do they not? A. Not in the live poultry consuming group.

Q. You mean it is impossible for a person to switch from live to dressed poultry? A. Unless they get a lot of poor unedible live poultry, because people who have been brought up on live poultry do not care to change, but if a person goes out and buys a lot of inferior poultry, they are the ones that have swung over to the dressed poultry and that is why we have suffered by it.

Q. You have suffered personally by it? A. The industry has.

Q. Didn't you testify on direct examination up to a short time ago the market man, coming into the market, was compelled to take whatever the commission merchant gave him, do you remember that statement you made this morning? A. Yes.

Q. Weren't you the cause of the entire situation? A. Yes.

Q. It was you that forced the small merchants like the Schechters to buy whatever you gave them, is that correct? A. I wouldn't put it just 1100
that way, not our particular company.

Q. Generally the commission merchants, isn't that correct? A. Yes.

Q. They had to take what you gave them? A. Yes.

Q. Otherwise they couldn't get poultry? A. That is right, they couldn't get poultry around New York.

Q. That is right. A. That is why we got the Code to remedy it.

Q. When was the lowest peak as far as business is concerned? A. I am not an economist, 1101
Mr. Heller.

Q. When was it in the poultry business? A. Last year was about our poorest year.

Q. Was it poorer than in 1932? A. In view of consumption, yes.

Q. In view of sales as far as commission merchants are concerned? A. Well, naturally you read it there, some seven hundred and some odd cars less than in 1932.

Q. Does that mean that you lost money last year? A. The industry in general.

Q. Yes. A. I can't speak for them, not the dealers in general.

1102 Q. Do you know that the industry in general lost money this year? A. Yes.

Q. Losing every day? A. Every day.

Q. And nothing can help a situation like that except general economic results, is that it? A. I feel that by strict enforcement of our Code it will be a force to help us, because we requested the Code to abolish the very evils that have gotten us into this trouble.

Q. You mean you requested the Code? A. I did, yes.

1103 Q. So he would have to take whatever you would give him? A. No, not at all, so he wouldn't have to take whatever we gave him.

Q. Isn't it a fact that he has to take a coop without selection? A. He has to take it straight, but he doesn't have to take poor inedible poultry.

Q. But he has to take it straight? A. That is right.

Q. And the only limitation is upon him, isn't that it? A. That is right, at the present time.

Mr. Heller: That is all.

1104 *Redirect examination by Mr. Rice:*

Q. Mr. Tottis, what causes a commission man to import poor quality poultry? A. Well, both the demand, and the fact that if he gets it in he can sell it.

Q. If the sale of unfit poultry is prohibited will the commission men continue to bring it in? A. Absolutely not.

Q. Will the shipper continue to ship it? A. No, sir.

Q. Then is it a fact that the buyer's demand fixes the quality of poultry that is shipped into

New York, by buyers I mean the market men's demands. A. Absolutely.

Q. And if the market man is prohibited from selling unfit poultry, then it will not be shipped into New York? A. Absolutely.

Q. Are you familiar with the definition of a cull as given in the Live Poultry Code? A. Yes, sir.

Q. Do you know where that definition came from? A. The industry, I believe, defined it.

Q. How does the industry ordinarily define the term cull? 1106 A. A bird that is unfit for human consumption.

Q. How is it defined in the Live Poultry Code? A. Poultry unfit for human consumption.

Q. The same way? A. Yes, sir, but apparently the Government has a different definition of it.

Q. You mean another branch of the Government? A. Another branch of the Government, that poultry unfit for human consumption is the trade name for cull regardless of what the West calls it or anybody else, the trade in the East, in New York refers to poultry unfit for human consumption as a cull, and anything that is better than that, that is fit for human consumption and poor is referred to as undesirable or a second. 1107

Mr. Rice: Mr. Heller, may I see that document where you stated that the Government called culls in New York City merely inferiors?

(Mr. Heller hands document to Mr. Rice.)

Mr. Heller: It is at the bottom of the page.

1108 Mr. Rice: I wish to offer in evidence the page 14 of this bulletin entitled, "Wholesale Marketing of Live Poultry in New York City, dated May, 1929, Technical Bulletin No. 107, Official Government Document."

Mr. Heller: Objected to as wholly incompetent.

The Court: Didn't you use it in cross-examination?

1109 Mr. Heller: He can ask him any question that he likes, and so can I.

The Court: But if you quote an authority the authority may be presented.

Mr. Heller: I have no objection to introducing the part that I read, cut that out and put that in.

The Court: Whatever part you referred to is admissible, but the whole book is inadmissible.

Mr. Heller: I just read three lines, he can offer that.

1110 Mr. Rice: If your Honor please, Mr. Heller read three lines it is true from this book, and upon questioning from the witness Mr. Heller stated to the witness that this definition of culls was a definition in relation to New York poultry. Now, I proposed to show by offering the entire page in evidence that this definition relates to poultry throughout the country, and does not relate to New York City.

The Court: Let me look at it.

Mr. Heller: I merely read the definition given by the Government.

1111

The Court: But if it is a general one and not a restricted one, he can offer that in to show what it is.

Mr. Heller: I stated what it was it is stated in the definition.

The Court: No. I will admit that paragraph. I am not going to admit the whole page. You may offer that one paragraph in evidence that he read a part of.

Mr. Heller: I read the bottom that is all I read just at the bottom there.

1112

The Court: I can't help it I will let the whole paragraph in, but not the rest of the page, it has no relation to it, just that one printed paragraph, the statistics have nothing to do with it.

Mr. Rice: Very well, your Honor, I will comply with Mr. Heller's request and offer in evidence only the statement which he read at the bottom of the page.

The Court: You can do that, or you can have the whole paragraph if you want.

Mr. Rice: I will offer only the statement at the bottom.

1113

The Court: You see the statistics are no part of the case.

Mr. Rice: If your Honor please, counsel agrees that it may be read into the record in lieu of offering it as an exhibit.

The Court: Yes, that is very much better.

Mr. Rice: "Culls, poultry which is fit for human consumption but which may be thin, lacking vigor, or deformed or blemished in such a way as to render it salable only at considerable discount from prevailing prices for live poultry of its class."

1114 *Theodore J. Tottis—By Govt.—Redirect*

I think in connection with that if your Honor please, the title of the pamphlet be considered a part of the exhibit. I have already read that into the record.

The Court: Surely.

Q. Mr. Tottis, the live poultry business has been suffering for the past few years, has it not? A. Yes, sir, financially.

Q. Have there been slaughter house men and commission men who have gone through bank-
1115 ruptcy? A. Yes, sir.

Q. In fact, the company that you were associated with went through bankruptcy, did it not? A. Yes, sir.

Q. And were you the only one? A. No, sir.

Q. How many were there, approximately? A. There are so many that it is hard to keep track of.

Q. Do you think that 50 per cent. of the slaughter house markets have gone through bankruptcy in the course of the last four or five years? A. I don't believe it would run that
1116 high.

Q. What percentage would you estimate? A. I would estimate about 20 per cent., that is, either through bankruptcy or through reorganization, with settlements, the equivalent of it.

Q. What were the economic conditions under which the poultry slaughter houses went into bankruptcy?

Mr. Heller: I object to that. He is not qualified to testify to that.

Mr. Rice: I am asking him about the economic conditions existing——

The Court: He did not ask him what caused them. He asked him what the conditions were.

Mr. Heller: He said he was no economist. He could not answer me, he would not answer me.

The Court: He said he knew about this particular business.

Mr. Heller: I do not think even a proper foundation has been laid for this question.

1118

The Court: Let us find out what he knows about it.

Mr. Heller: Exception.

Q. Do you know what the competitive conditions were in the live poultry slaughter house business during this period when 20 per cent. of them went through bankruptcy? A. I just merely stated it was very chaotic.

Q. In what respect? A. Impossible to get a price for the poultry, impossible to get your operating expenses out of poultry.

1119

Q. What were some of the competitive practices existing during that time? A. The very ones that have been enumerated in the Code, selling poultry unfit for human consumption, uninspected poultry, secret rebates. It was to eliminate those very practices that the industry requested this code.

Q. I believe on cross examination you indicated that you had been in the electrical engineering business. A. Yes, sir.

Q. Prior to the time that you were in the poultry business? A. Yes, sir.

Q. Have you a degree? A. Yes, sir.

Q. What degree is it? A. Mechanical engineer.

1120 Q. Are you a graduate of some college? A. Yes, sir.

Q. What college? A. New York University.

Q. You were not in the live poultry business as a live poultry dealer prior to 1926? A. No, sir.

Q. But did you have an opportunity to observe some portions of the live poultry business prior to that time?

Mr. Heller: He has answered that.

The Court: He has already testified
1121 about that at some length.

Mr. Rice: On cross examination.

The Court: I say but he did testify about that at some length, no matter what examination.

Mr. Rice: Very well.

The Court: If you want to ask him any specific thing that was omitted, but he told you what his opportunities were, and that he did investigate.

Q. Prior to the time that the Code became
1122 effective you were familiar with the inspection of live poultry? A. Yes, sir.

Mr. Heller: That has been gone over at great length.

The Court: There may be some special question. He has given you his experience pretty broadly, I think.

Q. And you are familiar with the inspection of poultry as it has existed since the Code came into effect? A. Yes, sir.

Q. And in your direct examination you were comparing the inspection prior to the Code and after the Code, were you not? A. Yes, sir.

Q. Do you know whether the conditions in the live poultry business prior to the adoption of the Code in May, 1934, were worse than the conditions in other industries, generally speaking?

Mr. Heller: I object to the form of the question.

Q. (Continuing.) Or better?

The Court: He said he was not an economist and he could not tell about other in- 1124
dustries. He answered that before.

Mr. Rice: Very well.

Q. You were asked on cross examination whether it would not be possible to inspect the poultry prior to shipment. Now, in your opinion would it be practicable to make the inspection prior to shipment instead of at the time of the receipt of the poultry in New York? A. It would not be—the inspection out there would not be any particular advantage because there are three to seven days in transit, and the con- 1125
dition of the poultry could change so, but the grading should be done in the country, not the inspection. Inspection does not mean anything with infectious diseases until just at the time you buy it. Grading is a different question. It should be graded out there.

The Court: So the jury will understand just what you mean, explain "grading."

Q. Yes, will you please explain what you mean by grading? A. By grading means to separate the unhealthy and the unfit poultry from the good poultry and to separate it by size, because at vari-

ous seasons of the year there is a demand for either small birds or large birds, and if the poultry were graded by size out in the country, then when it arrived here it could be bought by the slaughter house operator, according to size, paying a different price for birds under four pounds than he would for over four pounds, and in that way you would be able to satisfy your customers without having to give them a seven-pound chicken when they ask for a three-pound chicken. You could give it to them reasonably
1127 close to the demand. That grading should be done in the country. The inspection, which is for health, unfit poultry, will always have to be performed on this end.

Q. How would that grading at the point of shipment be brought about? A. It could be brought about very easily.

Q. Does the practice of straight killing have any bearing upon that? A. Straight killing would force immediately, by immediately I would say within a week, you would be forced to grade your poultry out in the country before it comes into
1128 New York. If I can explain this at the present time?

Q. Surely. A. With straight killing being enforced at the present time, a market man will go out and buy ten coops and he is not supposed to grade that. He is supposed to sell it straight; but at the present time he can very readily go into his place at midnight or one o'clock in the morning, when nobody is around, and grade all his various coops by size, and then when a woman comes in, when his trade comes in in the morning, he has it selected fairly well. A butcher can come in and say, "I want 15 heads of small fowl and 25 heads of large fowl," or the same for

chicken, and he has graded them during the night so he can go right there; and if a woman wants a four-pound fowl, he can give her something that is reasonably close. To do that after it is bought straight is a violation of the Code. If straight killing could be or would be enforced all the way down the line at the present time, that grading would immediately be forced back into the country, it would be a function of the shipper to grade it, and then you would know just how you stand with your poultry and you 1130
could satisfy your trade better than you could at the present time.

Q. Does the practice of straight killing refer to purchases made by consumers from their butchers? A. No, only to the butcher and chicken dealer from the wholesale slaughter house.

Q. That is, it relates only to the relationship between wholesaler and retailer? A. To the two middle men, yes, sir.

Q. Now, does the butcher or retail poultry dealer very often buy only four or five chickens? A. The chicken dealer? 1131

Q. Yes, do the retail poultry dealers and the butchers very often buy only four or five chickens at a time from the wholesaler? A. It sometimes happens—you mean the wholesale slaughter house market?

Q. Yes. A. It happens fairly regularly with butchers, but not with chicken dealers. They buy in large volumes, very seldom less than a coop lot, but the butcher may have occasion to go to the market and buy in fairly small quantities.

Q. Well, if a butcher wants chickens that weigh five pounds and only five pounds, where could he

1132 go to get them? A. To the chicken dealer that buys in large volume.

Q. Is that the custom of the trade? A. It has been in the past before the trade was spoiled by us, by grading directly for them.

Q. In your opinion would that be the custom of the trade as to those particular purchases by butchers if the straight killing were enforced? A. Absolutely.

Q. Now, on cross examination you were asked
1133 whether you heard the testimony of Dr. Ives to the effect that some of the chickens in the back part of the coop could not be seen by the inspector, and I believe you stated you disagreed with Dr. Ives? A. Yes, sir.

Q. Will you state what your observation has been?

Mr. Heller: I object to him impeaching his own witness, your Honor.

The Court: He is not impeaching him. Two witnesses can disagree, but that is not impeaching; they can disagree as to their
1134 belief without impeaching.

Mr. Rice: I submit the witness really disagrees with Mr. Heller's interpretation.

The Court: But I have ruled in your favor.

Mr. Heller: Exception.

A. As I said before, the deck will hold approximately, varying 25 to 30 to 32 heads of hens, and hold 30 to 40 heads of chicken. That poultry, by an inspector walking in, he can see all of those crowded up against the rail on the inside of the car, and he can see all the birds on the outside that are up against the screen, and when

he has to inspect the car for crop content, he has to stand up with his arm on a level with the deck and he can look into the coop, and he has to go in at arm's length, and he has to push birds aside so it is easy for him to see the deck and to get a very accurate condition on the health of the poultry in there.

Q. How long does it take an inspector to look through one coop of poultry? A. I was talking about inspection in a car, Mr. Rice.

Q. One deck—I mean, how long does it take 1136
an inspector to look through one deck of chickens to inspect them all for health? A. Well, if he feels like hurrying he can do it somewhere between one and two minutes in each deck.

Q. He can do it efficiently in that time? A. Certainly.

Q. And see every bird? A. Yes, sir.

Q. Now, on cross examination you were asked whether chicken cholera could be ascertained without a post-mortem? A. I can recognize it in the advanced stage, but there are any number of people who do extension work in the country that 1137
can recognize it practically at any stage.

Q. Well, how about the other poultry diseases? Can they be recognized without a post-mortem? A. Yes, a lot of them.

Q. Most of them? A. Most of them.

Q. Approximately what percentage of the freight poultry coming into New York is consigned to the commission men on an agency basis? A. That would be strictly a guess on my part.

Q. Well, I want your estimate. A. It is a personal business that they will never tell. Roughly, over half—we have any number of firms in New York whom we know are absolutely on a straight

1138 consignment basis. I would say offhand 60 to 75 per cent. of the poultry is on a consignment basis and at times it may run higher. That is purely a guess on my part.

Mr. Rice: That is all.

Recross examination by Mr, Heller:

Q. Are you familiar with the fact that the inspector is allowed 17 minutes to examine a car? A. He must inspect it in 17 minutes?

1139 Q. Are you familiar with the rule that he is only allowed 17 minutes for each car? A. I have never seen them do it in any specified or restricted period of time. They invariably take 20 minutes to a half hour and I did not know that any such regulation existed.

Q. You have actually timed them? A. Yes.

Q. You made that a specialty, too, did you? A. No, but you see, for instance, the Tennessee Egg Company wants to know exactly how his poultry is handled when it arrives in New York. He has a form sheet that he requires to be filled out as to

1140 what time the railroad delivered the car to our siding, what time the car man was informed by the commission house to get ready for unloading; what time they told him to be ready; what times he got through feeding; what time the inspector came into the car; what time he got out; and what time the car started to work; what time it was finished.

Q. Where did you make this record, in the Bronx Terminal? A. Yes.

Q. That did not happen in the West Washington Market? A. That I don't know; I do not care to go into it down there. If an inspector

1141

is in a car for 20 minutes or 10 minutes down there it is no concern of mine.

Q. Well, all but two terminals are down at the West Washington Market? A. All but three.

Q. And one inspector is assigned to your market and the rest are all down at the West Washington Market? A. Dr. Ives would be better qualified to tell you that than I.

Q. Your opinion differs with Dr. Ives because of your experience in the Bronx Terminal—— A. You mean in length of time?

1142

Q. Yes; it is possible that there is a rule for the West Washington Market of a limit of 17 minutes and not in the Bronx? A. No, because that rule would apply to all terminals.

Q. Do you know that there is such a provision? A. I do not.

Q. There are about 128 tiers to a car? A. Yes.

Q. And each inspector inspects these particular tiers piled one on top of the other? A. That is right.

Q. And then they put their hand in and feel some of the birds, is that right? A. Yes.

1143

Q. And they look at them? A. Yes.

Q. And by that they see if they can catch any disease by looking at them? A. Yes.

Q. And they pass from chicken to chicken? A. Yes.

Q. Now, do you sell to the market people at all? A. Well, our commission firm sells to market people.

Q. Well, how many? A. On and off; we may sell to a dozen different ones. We do not make it a special practice to bring in poultry particularly for resale, except to our own slaughtering company. The bulk of it goes to them.

1144 Q. In other words, you are really a purchaser for your own slaughtering concern? A. For our commission company.

Q. Occasionally you accommodate other slaughter house people? A. A few regularly and a few occasionally.

Q. And it is limited to about 12 customers? A. Yes.

Q. And that is the extent of your company's business? A. Yes.

1145 Q. And you take in about a car a week? A. How is that?

Q. How many cars a week do you bring in? A. Well, we handled 258 last year. We handle about 5,000,000 pounds of poultry a year.

Q. How many cars a week? A. An average of five cars a week.

Q. Five times 52 would be how much? A. 260.

Q. You bring in five cars a week? A. Yes.

Q. And that is for the use of your retail slaughter concern? A. Our wholesale slaughtering concern.

1146 Q. And how much is that, would you say? A. An average of 80,000 pounds a week.

Q. And how many of those five cars do you consume in your own slaughtering concern? A. It would be a little over five cars, the equivalent, go through the slaughtering house.

Q. You mean out of the five cars that come in you consumed? A. We bring in five cars and we truck stuff besides, and some of the car lot poultry goes to outside buyers.

Q. Well, what is the amount of trucked poultry that comes in? A. To our place?

Q. Yes. A. In certain seasons in a week it will run a half a car and in some seasons three cars.

Q. So on an average would you say six cars a week, taking into consideration the trucking and the railroad poultry? A. Somewhere between seven and eight cars.

Q. And out of the seven cars of poultry you use five for your own use, that is, your subsidiary company, and two you sell to other slaughter house concerns? A. Two or three cars. 1148

Q. That is your extent of the business? A. That is right.

Q. And you said that there were 20 per cent. failures last year in your industry? A. In the last couple of years.

Q. How many years do you take into consideration? A. Three. It was purely a guess on my part, naturally.

Q. It is not a statement of fact? A. No, it is a statement of my opinion.

Q. And that 20 per cent. failed during the last two years, that is your opinion also? A. Yes. 1149

Q. You couldn't give us the names of the firms that failed which would aggregate 20 per cent. of the total number, could you? A. No.

Q. And you do not know that more than ten firms went into bankruptcy, do you? A. I do not keep a record of bankruptcies; I am not particularly interested in that.

Q. You do not know whether 15 firms went out of business during the last two years, do you? A. At least that many.

Q. You know that that many did? A. I couldn't start to enumerate them.

Q. But you know some went out of business? A. Yes.

1150 Q. Some may have liquidated and paid their creditors in full? A. May have.

Q. You do not know whether they actually filed petitions in bankruptcy in the Federal Court, do you? A. No.

Q. You do not know that they actually made composition agreements with their creditors? A. No.

The Court: We will take a recess for a few moments.

1151 Q. Am I correct in stating that you said it takes about 20 minutes or 30 minutes to inspect a car per inspector? A. Yes.

Q. Did you say about a minute or two for a tier? A. About a minute.

Q. And there are 126 tiers. That would make it about 126 minutes? A. No; he does not inspect every tier. He is not supposed to.

Q. Oh, he skips some tiers? A. Yes.

Q. In other words, he does not examine every tier? A. No, he takes a cross section of the car.

1152 Q. In other words, he chooses indiscriminately one, two or three tiers? A. No; they have a special pattern to go by. It may be in the form of a Z across the top, down diagonally, and across the bottom or it may be in the shape of a cross. They have various forms. It is a cross section of the car. It is not every single tier.

Q. Let us get this straight then. If he were to examine every tier, it would take him 126 minutes. A. Yes.

Q. That would be about a little over two hours? A. Well, six minutes over.

1153

Q. And that would mean that he would examine some part of the tier? A. In that time he could examine each tier pretty thoroughly.

Q. But actually they don't do that? A. That is right.

Q. They spend only 20 minutes? A. That is right.

Q. And after examining or stamping, as we call it, certain tiers, why, they mark it O.K. for consumption, or give them an inspection certificate? A. That is right.

1154

Q. If the commission men refused to handle unfit poultry would any unfit poultry come into the City of New York? A. Not unless it went directly to a slaughter house.

Q. Assuming that all the poultry, that is, we are considering only the poultry that comes in by freight to the different markets, if these commission merchants would refuse to accept unfit poultry, would any unfit poultry come into the State or City of New York? A. No.

Q. It would be an impossibility? A. Yes.

1155

Q. It is only by virtue of the fact that they are willing to accept it that it comes in? A. You said it would be an impossibility. It would be an impossibility, as I say, unless it went directly to the slaughter houses.

Q. We are now talking about freight poultry coming into the market. I say, under that circumstance alone, because they come into the freight terminals, that is because the commission merchants are willing to accept them? A. That is right.

Q. And as to grading, I believe you have expressed yourself that the best place would be, and ultimately they would be graded at the source of shipment? A. That is right.

1156 Q. And that would obviate this business of selecting chickens? A. Yes.

Q. So they would be able to grade 5-pound chickens in separate crates, and 3's and 4's, and so on? A. They would be able to grade it by desirable sizes as it is demanded.

Q. And under the present Code provision, if a man wants to, as you said, grade these chickens at night time, he could avoid complying with the Code, is that right? A. Well, the way the Code is phrased, they would not be permitted to do
1157 that. It is to be brought in graded.

Q. Right, but if someone wants to do it at night time, you said he would be able to avoid complying with the Code? A. He would avoid compliance.

Q. And he would take advantage over the next man, wouldn't he? A. Yes, sir. That is right.

Q. Then the element of wages would have nothing to do with this industry were the poultry graded at the source of shipment? A. No, I would not say that, because if a man can undersell me, despite the fact that it is graded, I am
1158 going to ask for second-grade poultry instead of top grade poultry.

Q. But the poultry would be graded, would it not? A. Yes.

Q. At the source? A. Yes.

Q. And if I pay a man less wages and sell the first-class grade of merchandise, that wage scale would not affect that scale, would it? A. Not the top grade.

Mr. Heller: That is all.

Mr. Rice: That is all.

(Witness excused.)

W. T. TERMOHLEN, called as a witness on behalf of the Government, having been first duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. Mr. Termohlen, what is your occupation? A. At the present time I am principal agricultural economist in charge of the poultry unit of the general crop section of the Agricultural Adjustment Administration. I am located in Washington, D. C. 1160

Q. Have you had experience in analyzing the economics in relation to the poultry industry? A. Yes, sir, I have.

Q. Over what period of time? A. Since 1921. It would be necessary for me to give you a brief history in order to answer that question.

Q. Will you review briefly your experience as a poultry economist and the training which you had as a poultry economist prior to the time you become such? A. In 1921 I enrolled in the Iowa State College in the Agricultural Department, in poultry husbandry, as a Veterans' Bureau student. 1161

Q. And what does poultry husbandry deal with? A. Poultry husbandry, as we use it in colleges, deals with the raising of poultry, the breeding, the feeding, the housing and nutrition and covers not in general detail such subjects as marketing.

I graduated in 1925, I went to three summer schools as well as the regular school year so that I actually had five college years. I had one year of college prior to the war. At that time I had taken an engineering course. Then in 1925, after graduation, I went to work for a feed concern,

1162 the Albert Dickinson Company at Chicago, Illinois. I worked throughout the middle west and I had charge of their service work as it related to poultry, principally poultry as handled in the poultry plants throughout the middle west. I worked with that concern until the Fall of 1926. I spent most of my time in the State of Iowa, Minnesota, South Dakota, and into Wisconsin, and Illinois, Missouri and Kansas, going into probably some 60 or 65 houses, that I spent anywhere from one day to six months' time.

1163 Q. Now during that time did you have occasion to study the poultry marketing conditions? A. Yes, that is one of the reasons that I took the job. While I was doing my under-graduate work I took considerable economics, over and above what I needed in my regular course because I realized that there was an opportunity to train myself as a marketing specialist in poultry practice. I could not find anyone that was trained, from an educational standpoint, in that particular phase, and therefore I wanted

1164 to get practical experience and I felt that this job that I had taken would give me this practical experience. I expected, after being on it a certain length of time, to go back to college.

The occasion arose in 1926—I had an opportunity of going back to school on a part-time basis, doing research work in poultry marketing. I enrolled in the Fall of 1926, to take my master's degree in agricultural economics, specializing in poultry marketing and as part-time research assistant. I nearly completed my work in the summer of 1927—I would have completed it at the end of that Summer but an appropriation made possible the employment of some men

in Iowa on marketing work and I was put on as extension poultry marketing specialist with the rank of assistant professor, in August of 1927. I kept that position and also served part of my time as a researcher's assistant in an agricultural experimentation. Agricultural extension work is a type of work that you carry the information that is obtained from the experiment station out to the farmers throughout the state. I also inaugurated a new plan of carrying information to the people who were marketing the products, these shippers that had been told about here today, the concentrators of the product and I carried on a great many meetings with them. I continued that work until August of 1933, at which time I was called to Washington by the Agricultural Adjustment Administration to take over the present job that I have. 1165 1166

Q. What are your functions as head of the poultry unit of the Agricultural Adjustment Administration? A. To administer, under the policies established, the aspects that come under the National Industrial Recovery Act as they relate to unfair trade practices in the administration set up in Codes. All of the labor aspects are handled by the National Recovery Administration. We have nothing to do with that in our unit. Then, we maintain activities that relate to the Agricultural Adjustment Act as fits in with the poultry industry. 1167

Q. And in connection with those functions have you had occasion to study the live poultry industry of the metropolitan area of New York? A. Yes.

Q. And what study have you made? A. We have made studies in regard to this industry,

beginning last August when we were requested by members of the industry to start through a code of fair competition.

Q. Do you mean August of 1933? A. August of 1933, yes, sir. I spent a great deal of time myself coming to New York and discussing this with members of the industry and with people who were acquainted in the industry. Since January I have had in my employ one man who has devoted practically all of his time to analyzing this live poultry industry. Last Decemer
1169 I employed one statistician who has spent part of his time analyzing certain statistical phases of the industry and then about two months ago I employed another man as a statistician. We are hoping to develop a program or project which will be of an economic——

Mr. Heller: Well, if your Honor pleases, we have had his qualifications and I do not think that what he hopes is quite relevant.

The Court: Yes, we will leave that for
1170 the future.

Q. What programs have you worked on, Mr. Termohlen, with respect to the live poultry industry of New York?

Mr. Heller: May we get the date of that?

Mr. Rice: Since August, 1933.

A. Since August of 1933, we have carried on up until April very direct activity in regard to the development of this code. I have a fairly complete record of the important parts of that activity. Since that time we have cooperated

with the Code Authority, since I am a member of the Advisory Committee having been appointed by the Secretary of Agriculture. We also have cooperated in the gathering of certain statistical information at various times.

Q. How many members are there of the Code Advisory Committee? A. 15 from the trade, 1 member from the National Recovery Administration, and myself from the Agricultural Adjustment Administration.

Q. And you are appointed by Secretary Wallace for that purpose? A. That is correct. 1172

Q. The Secretary of Agriculture? A. That is correct.

Q. Are you familiar with the circumstances under which the Live Poultry Code was negotiated and adopted?

Mr. Heller: That is objected to as entirely too broad and indefinite.

The Court: I do not know just what it means.

Mr. Rice: This is a preliminary question, your Honor, to establish whether or not he is familiar with the facts under which the Live Poultry Code came into being. 1173

Mr. Heller: We take judicial notice that the Code has been enacted, whatever is in there is in there.

The Court: It seems to me that that is pretty broad.

Mr. Rice: Very well, I will rephrase the question.

The Court: Just get down to the case, because I think that covers much more than we have here.

1174 Q. Mr. Termohlen, when was the Live Poultry Code adopted? A. April 13th, I believe was the date.

The Court: 1934?

The Witness: 1934, and became effective on the 23rd of April.

Q. That is, it became effective ten days after it was signed by the President? A. That is right.

1175 Q. And prior to that time had the Agricultural Adjustment Administration studied the live poultry industry of New York City? A. Yes.

Q. On what occasions? A. Well, it was so many occasions that I have a history, a case history of every step that we used in the process of developing this and I make no effort to remember every specific date in my head what dates it was that people came to Washington and so forth because we have been handling so many different Codes but I do have a case history and I can give you those dates.

1176 Q. Do you know whether or not the industry requested a code for the live poultry industry? A. Yes.

Mr. Heller: That is objected to.

The Court: It is alleged that it was requested by the industry.

Q. Will you answer that fully? A. It is necessary for an industry to request a code of fair competition under the National Recovery Act, Section 3-A, is the section which calls for trade organizations, associations or groups from the trade to request a code of fair competition. We have nothing to do——

Mr. Heller: We take judicial notice now that is not the fact.

Mr. Rice: We will not discuss the law now.

The Court: I will do that and determine what the law is.

Mr. Heller: At this point I think we ought to know that that is not the fact.

The Court: I do not think that that is what the witness was called upon to answer anyhow. 1178

Q. We do not want to know what the Industrial Recovery Act says.

The Court: We want to know what you did.

Q. Yes, just what happened prior to the adoption of the Live Poultry Code.

Mr. Heller: I do not understand that what happened is proper, anything might have happened in this world in the last year or two. 1179

The Court: He has already testified that the industry requested the Code, what more do you want? Do you want statistics or something of that kind? Let us get to it.

Q. Do you have an official Government record of the various steps taken by this industry prior to the adoption of the Code? A. Yes.

Q. Will you produce it? A. I have one that——

Mr. Heller: I object.

1180

The Court: That is whether the industry requested it.

Mr. Heller: He has answered that they have.

The Court: I do not really see what all this has to do with it; if they requested the Code, all right. Now, if he made any investigation, if he knows anything about the conduct of business or anything of that sort, that is all right, but whether John Smith or John Jones or somebody else

1181

went to Washington to ask him about it, I do not think that means anything.

Mr. Rice: Very well.

Q. Prior to the adoption of the Code on April 13, 1934, was there a hearing on the part of members of the industry? A. Yes.

Mr. Heller: I object to that.

The Court: That is part of the allegations, that a hearing was had. There seems to be some requirement for a hearing and he can testify to that. It is so

1182

alleged anyhow, so what is the use of shaking heads about it.

Mr. Heller: I mean that we have no testimony that he was present.

The Court: I do not know, he has asked him and he is supposed to answer as to what he knows as a matter of fact.

Q. Were you present at that hearing? A. Yes.

Q. In what capacity? A. As a representative of the General Crop Section of the Agricultural Adjustment Administration.

Q. Did you sit at the chairman's table at that hearing? A. I did.

Q. You participated in all of the meetings of that hearing? A. Yes.

Q. How long did the hearing last? A. Approximately two days.

Q. And who was represented at that hearing? A. Representatives of the various groups of the trade——

Mr. Heller: A hearing was had and that ends it, that is the requirement. 1184

The Court: No, he can ask whether the industry was represented or not; that is all he has testified to; whether the industry participated, he can ask that. What harm does it do?

What has all this to do with it, Mr. Rice? There was a hearing, there is a Code. What difference does it make who was there, unless you want to show that some of the defendants were there.

Mr. Rice: Precisely that is what we want to show. 1185

The Court: Then let us get right to it, do not let us waste a lot of time about it. If the defendants participated in the hearing that of course is material, no doubt about it.

Q. Prior to the hearing were notices sent out from Washington to members of the live poultry trade in New York City? A. Yes.

Q. Did you see those notices? A. Yes.

Q. I hand you a certified copy of a notice and ask you whether that was the notice that was sent out to the live poultry trade of New York City? A. Yes.

1186

Mr. Rice: I offer this certified copy of the notice in evidence.

Mr. Heller: Objected to on the first ground there is no testimony that he mailed them out, and we are not a party to this document.

Mr. Rice: May I call your Honor's attention to the fact that this is a certified copy, actually signed by Mr. Henry A. Wallace, Secretary of Agriculture?

1187

The Court: That is correct, but does that prove that it was mailed? That is the notice, there is no doubt about it, a certified copy of the notice, but does that prove that the notice was mailed to anybody?

Q. Do you know whether or not this notice was mailed out to people in the live poultry trade of New York City? A. It was; I requested that it be mailed out. We prepared a list of the members of the industry, working in co-operation with two groups here in the industry,

1188

and mailed this notice plus a copy of the proposed Code to be discussed to that entire mailing list.

Q. Was a copy of the mailing list prepared at that time? A. Yes.

Q. And has a copy of it been kept? A. Yes.

Q. I hand you a second document and ask you whether or not that is a certified copy of the mailing list to whom the notice was sent? A. That is correct.

The Court: Under your supervision?

The Witness: Yes, sir, under my supervision.

Mr. Rice: Now I offer in evidence first the certified copy of the notice.

Mr. Heller: May I ask a question before it is offered in evidence?

The Court: Very well.

By Mr. Heller:

Q. Did you personally deposit these notices in the mail? A. No, I wouldn't do that, personally.

Q. You didn't go with the girl to deposit them 1190
in the mail, did you? A. I have faith in our people that when we give them orders to do certain things that they will do them.

Q. As a matter of fact you merely gave an order that they be mailed? A. I know that those were sent out.

Q. You hope that they were sent out? A. I am certain that they were sent out.

Q. Did you see the girl mail them? A. I had one of my men check to see that they were sent out the day after we sent them to the mail office.

Q. Did you actually see someone deposit that 1191
mail directed to the person to whom it was addressed? A. No.

Q. You can't say as to whether the person did or did not deposit the mail except from what they told you? A. I have enough faith in our employees to know that they will.

The Court: I do not think you have proved mailing, have you? You have a certified copy of the notice, you have a certified copy of the list, but the mere fact that somebody made a list is not proof of mailing.

Mr. Rice: Do I understand that counsel wants us to bring the mailing clerk down here from Washington, D. C., to prove the fact that these notices were put in the mail box?

Mr. Heller: As far as I am concerned, if you want to prove mailing to anyone else in this world, I have no objection, but not as to us. I do not know whether you mailed it to us or not. I do not

1193 know anything about this. I do not know the purpose of this.

The Court: That does not prove the mailing.

Mr. Heller: I do not like to put you to the trouble, but this is immaterial.

Mr. Rice: Very well, we will subpoena the mailing clerk from Washington, D. C., and produce her.

The Court: Do you want to mark it for identification?

Mr. Rice: Yes, I will mark the notice first and the mailing list second.

1194 (Notice marked Government's Exhibit 19 for Identification, and mailing list marked Government's Exhibit 20 for Identification.)

Q. Mr. Termohlen, when documents are mailed from your office at the poultry unit of the Agricultural Adjustment Administration, what is your custom in having such letters or circulars mailed? A. It depends on the type of letter or circular. If I may give a concrete illustration——

The Court: Take letters like this one.

The Witness: Yes, sir.

The Court: This is what we are interested in.

The Witness: A notice of this type, after it is prepared, we take this list to our Mails and Files and request them to send this material to each and every person on that list. Now, in order to make certain that it has been sent out on the particular day that we request it, if we order it sent out on the 7th of January, on the 8th, because there is a great deal of work, a great deal of stress, I have one of my men go up to the office and see that that material was mailed out. 1196

Q. Is that your usual custom in your office? A. That is true with this type of material.

Q. And is that the duty of the particular member of your staff that you have referred to? A. Yes.

Q. And was that custom followed in this particular instance when the notice of the hearing was sent out? A. I gave personally orders to have that same custom followed out. 1197

Mr. Rice: Now, if your Honor please, I submit that these documents——

The Court: That does not prove mailing at all. He told somebody to do it, and he told somebody else to see it was done. Personally he knows nothing about it.

Mr. Rice: I thought, if your Honor please, proof of custom——

The Court: Proof of custom of doing something does not prove it was done.

1198 *W. T. Termohlen—By Govt.—Direct*

Mr. Rice: Very well.

The Court: Somebody knows. It may possibly be the man he sent to check it up knows. He does not know anything about it. He has two reports from two different people. He knows nothing about it. That is not proof of mailing.

Q. I hand you, Mr. Termohlen, a certified copy of press release dated January 6, 1934——

1199 The Court: What?

Q. (Continuing)—entitled——

Mr. Rice: Press release.

Q. (Continuing)—entitled, "Hearing set on Code for New York live poultry industry," and I ask you whether or not you have ever seen that document before? A. Yes.

Q. Will you tell us precisely what it is? A. It is a brief statement that was issued by our office of information, press service, sent to the various newspapers, farm publications——

1200 Mr. Heller: I object to his reading this. It is wholly immaterial and incompetent.

Mr. Rice: The witness has not been reading it.

The Court: It was just something released to the newspapers.

Mr. Rice: Yes.

Mr. Heller: Yes.

The Court: Nobody has to take notice of what is in a newspaper unless it is a notice published according to law. They might issue it to individuals and some

1201

people might publish it and some others might not.

Mr. Rice: Correct, but we propose to establish the chain of proof showing it was published.

The Court: But that is not anything that is required by law. That is not notice to anybody. Somebody may read it, but it isn't notice. If any of these men were present, why don't you prove they attended?

1202

Q. Mr. Termohlen, you stated that at the time the notice, which is Government's Exhibit 19 for Identification, was sent out to the Live Poultry trade, that it was accompanied by a proposed code. I ask you whether or not this is a mimeographed copy of the proposed code which accompanied that notice?

Mr. Heller: If your Honor please, we have already had a ruling on the notice.

The Court: Yes; he could not very well answer that until you prove that the notice was sent. If this is the notice referred to——

1203

Mr. Rice: Oh, I understand; I withdraw the question.

Q. Is this the proposed code that is referred to in the notice which has been marked Exhibit 19 for Identification? A. Yes.

Q. And did you give directions to have mimeographed copies of this proposed code, accompanying the notices that were sent out? A. I did.

1204 Q. To all of the people on the mailing list contained in Government's Exhibit 20 for Identification? A. I did.

Mr. Rice: I now ask that this be marked for identification.

(Marked Government's Exhibit 21 for Identification.)

Q. Now, you say that you were present at the hearing on the Live Poultry Code? A. Yes.

1205 Q. And what date did that take place? A. January 17th.

Q. 1934? A. 1934.

Q. And were minutes kept of that hearing? A. Yes.

Q. By whom? A. By reporters, court reporters, who were employed by the Government for that purpose.

Q. Do you know whether or not the court reporters were instructed to take down every word? A. They are.

Q. And the whole proceeding was recorded? A. That is right.

1206 Q. And how long did the proceeding last? A. As I recall, approximately two days.

Q. Do you recall about how many pages of testimony were taken? A. I never counted them.

Q. I hand you this thick volume, about three inches thick, and I ask you whether or not that is a record of the hearing? A. Yes, sir, that is a record of the hearing, the official record.

Q. And is this particular document kept in your office? A. This docket is kept in what we call the hearing clerk's office.

Q. Of what? A. Of the Agricultural Adjustment Administration.

1207

Q. And does he have any duty to keep such a docket? A. Yes, sir.

Q. As to this Code? A. Every code in which we deal and have a hearing.

Q. Every code with which the Agricultural Adjustment Administration is concerned, is that right? A. Yes, sir.

Q. What else does this document contain, besides the minutes of the hearing? A. It contains various briefs which were submitted on the part of the various groups in the industry, those

1208

briefs having been submitted either at the hearing or within ten days after the hearing. We are required by our rules and regulations and our law to allow ample time after a public hearing for members of the industry to file further briefs regarding the content of the Code of Fair Competition.

Q. Is this docket open for public inspection? A. Yes, sir.

Q. And were additional copies of the minutes prepared? A. I believe there are about four copies.

1209

Mr. Heller: This docket is not in evidence and the witness is describing everything in it, your Honor.

Mr. Rice: For the purpose of laying a foundation to offer it in evidence, your Honor. We must find out what the document is before we can offer it in evidence as a public document.

The Court: I do not know what the whole thing has to do with it. If it shows that any of these men were present and participated, all right, but we are not concerned with the whole question of the

1210 arguments that led up to this Code. We know that the Code was approved, and the arguments therefore were all merged in. No matter what they thought of it before, when it was adopted it became the Code, and everything that took place before that is merged in it, but you have shown that there was a hearing, and that is all right. Now, if you want to show that any one of these defendants participated in that, and it is in that record, that is all right,

1211 but aside from that, why go into all of the argument about the Code?

Mr. Heller: Does he want a concession that the Code was adopted?

Mr. Rice: Will you make the concession that the Code was duly adopted?

Mr. Heller: Of course, I will concede that the Code was adopted, and of course duly, because it was signed by the President. I will concede that.

Mr. Rice: The law requires that the Code be adopted according to a certain

1212 decision.

The Court: I understand all that. Mr. Heller is willing to concede that it was adopted in compliance with the statute. Whether the statute was good or not is not the point, but that the Code was adopted in conformity with the statute. That is his concession.

Mr. Heller: That is right, your Honor.

Q. Now, Mr. Termohlen, are you familiar with poultry diseases? A. I took several courses in poultry diseases, and bacteriology, chemistry, and all that relates to the disease factor. I have

had quite a little experience in handling diseased birds.

Q. And you, of course, are not a veterinarian? A. No.

Q. I believe you said in your earlier testimony that you had developed a process of preventing the spread of certain poultry diseases? A. That is true.

Mr. Heller: I didn't hear it.

Q. Have you had such experience? A. Yes, I have. 1214

Q. And will you explain what that experience was? A. In August of 1925, there was a very serious outbreak of a disease that we have heard referred to here today as gaps, or infectious pharyngitis or infectious laryngotracheitis.

Mr. Heller: If the Court pleases, if the witness made a discovery in 1925, to cure a disease, I do not think it is pertinent in this case in 1934.

The Court: He was asked to give the experience he had had with certain diseases and he started to tell you. The objection is overruled. 1215

Mr. Heller: Exception.

Q. Go ahead and finish, Mr. Termohlen. A. It happened in this work for this particular company, working with a produce house who are concentrators of poultry, that one of the customers had a very serious outbreak in August. I went to this plant. Very little was known about this disease up to this time.

Mr. Heller: I object to what was found in somebody's plant in 1926.

1216 *W. T. Termohlen—By Govt.—Direct*

The Court: But how is he going to tell you of his experience without explaining how? It may be a roundabout way, but still it is relevant.

Q. Tell us what your experience was, briefly, without referring to any particular company. A. Well, it is very difficult to get at the chain of events. This disease is still in effect today, not as bad as it was at that time.

Q. What part did you play in it? A. That is
1217 what I am trying to tell you.

Q. Go ahead. A. With this disease, this outbreak at this particular organization, I was called in, I worked for several days, studying the various symptoms, trying to develop a method to prevent heavy death loss. The day that I arrived in the plant, if I recall exactly, there were a few over 400 birds that died. Out of that I developed a method of handling the birds when they came into the produce house, handling them while they were in the produce house, to prevent the spread of disease. Very simply I can ex-
1218 plain it by saying that after I had found the course of the various symptoms that were involved, we were able to detect by outward appearance when those birds were coming down with a disease, and we developed the progressive stages of the disease; we knew at what time they should be taken out of the batteries, batteries, by the way, being the equipment that we use to handle the birds and feed them while we are handling them in the produce house. I developed that course of infection, and therefore we were able to take those birds out before they got to a place where they were unfit for human

consumption. We also had to use certain feeding methods——

Mr. Heller: May I ask your Honor what the purpose of this examination is? What has this history about the diseases of the year 1926 got to do with the issues?

Mr. Rice: If counsel is satisfied to concede that this witness is an expert in poultry diseases, then we need go no further.

Mr. Heller: I take it that almost any- 1220
one is an expert. We heard from the other witness that he was not a veterinarian, he was not a doctor, but he is an expert. I take it this gentleman is an expert, and I will let him testify rather than go into the history of the United States.

Mr. Rice: You concede he is an expert in poultry diseases?

Mr. Heller: Yes, I will concede he is also an expert on diseases.

The Court: Gentlemen of the Jury, do not discuss this among yourselves, do not 1221
permit anyone to discuss it with you, and keep your minds open until it is finally submitted to you. I am asked, Gentlemen of the Jury, to ask you not to read in the newspapers any articles relating to this case, and I think that is very good, because you are hearing it now yourselves. Do not read in the newspaper, if you see anything, any articles about this particular case. Rely on what you hear here.

(Adjourned to Friday, October 19, 1934, at 10 A. M.)

1222 *W. T. Termohlen—By Govt.—Direct*

Brooklyn, N. Y., October 19, 1934.

(Met pursuant to adjournment at 10 A. M.; present as before.)

W. T. TERMOHLEN, resumed the stand:

Mr. Rice: May it please the Court I understand that counsel will stipulate with the Government that the mailing clerk of the Agricultural Adjustment Administra-
1223 tion, Washington, D. C., if called, would testify that on January 6, 1934, he mailed mimeographed copies of the notice of hearing contained in Government's 19 for Identification to all of the parties named on the list contained in Government's Exhibit 20 for Identification, and that he inserted with the notice in each envelope to each person in that mailing list, a copy of the proposed Code of Fair Competition for the live poultry industry, which is contained in Government's Exhibit 21 for
1224 Identification.

The Court: Mr. Heller, is that right?

Mr. Heller: Yes, your Honor.

Mr. Rice: I therefore offer Government's Exhibits 19, 20, 21 for Identification in evidence.

(Government's Exhibits 19, 20 and 21 for Identification received in evidence.)

Mr. Heller: In connection with my concession yesterday your Honor, as to the validity of the National Industrial Recovery Act I don't know if I made myself clear. That is of course without

prejudice to the questions raised by our demurrer.

The Court: I think I stated that regardless of whether it was constitutional or otherwise you conceded that all of the steps required to be taken by the statute had been taken and that the Code was enacted in accordance with the provisions of that statute.

Mr. Heller: That is right, I just wanted to preserve my rights under the demurrer. 1226

The Court: That is understood—but there was no statutory question, the only question was the question of constitutionality or construction. Those you did not waive.

Mr. Heller: Those I wanted to preserve, your Honor.

Mr. Rice: Now, with the consent of defense counsel I wish to read into the record as a portion of our evidence a provision of the Greater New York Charter, which is a statute of the State of New York. I read from Section No. 1172 of the Greater New York Charter under the Sanitary Code. 1227

Mr. Heller: The concession goes only this far, your Honor, that the book that counsel is reading from is an authentic book, that is the statutory book, and I do not require any proof with reference to the authenticity of this statute, but our objection to the entire reading of the ordinance that he is going to read is that it has not been properly pleaded and we object on that ground.

1228 *W. T. Termohlen—By Govt.—Direct*

The Court: Well, so far as the Charter itself is concerned, that is a statute, there is no question about that.

Mr. Heller: No, your Honor, there is no question about that and I don't believe there is any necessity for reading it into the record.

The Court: Well, it perhaps saves me some time later on.

Mr. Heller: Our objection is that it
1229 has not been pleaded in the indictment and we claim that you cannot take judicial notice thereof.

The Court: Well, that objection has been overruled and you have your exception. You however do not have any question about the authenticity?

Mr. Heller: No.

Mr. Rice: I read from the statute entitled, "Sanitary Code. The sanitary code which shall be enforced in the City of New York the 1st day of January, 1902, and all existing provisions of law
1230 fixing penalties for violations of said Code are hereby declared to be binding and in force in the City of New York and shall continue to be so binding and in force except as same may from time to time be revised, altered or annulled, as herein provided," and then "* * * copies of the records of the proceedings of the said Board of Health, of its rules and regulations, by-laws, books and papers constituting a part of its archives now or hereinafter enforced, when authenticated by its secretary or secretary pro tempore, shall be presumptive evidence of the

authentication and taken as presumptively correct in any court of justice or judicial proceeding when they may be relevant to the matter or point in controversy, to the facts and statements and recitals therein contained, and the Sanitary Code which is enforced May 1st, 1904, shall constitute a chapter of the Code of Ordinances of the City of New York."

Then, your Honor, I wish to read also the consent of defense counsel——

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The Court: Under the same objections and the same rulings?

Mr. Heller : Yes, your Honor.

Mr. Rice: I read from Section 19 of the Sanitary Code: "No live chickens, geese, ducks, or other fowl shall be brought into or kept, held, offered for sale, sold or killed in any yard, area, cellar, coop, building, premises, public market or other public place except the premises used for farming in unimproved sections of the City without a permit therefor issued by the Board of Health or otherwise than in accordance with the terms of said permit and with the regulations of said Board."

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I also desire to read Section 160 of the Sanitary Code.

The Court: With the same objections and the same rulings, with exceptions?

Mr. Heller: Yes, your Honor.

Mr. Rice: "Any calves, pigs, lambs, fish, birds and fowl"—"sale regulated"—"no calf nor meat thereof shall be brought into the City of New York or held, sold, or offered for sale for human consumption

1234 *W. T. Termohlen—By Govt.—Direct.*

which when killed was less than three weeks old.

"No pig nor meat thereof shall be brought into the City of New York or held, sold, or offered for sale for human consumption which when killed was less than five weeks old.

"No lamb, nor meat thereof shall be brought into the City of New York or held, sold, or offered for sale for human food which, when killed, was less than

1235 eight weeks old, nor shall any meagre, sickly, or unwholesome fish, birds, or fowl, brought into said City or held, sold or offered for sale for human food therein."

Direct examination by Mr. Rice:

Q. Mr. Termohlen, are you familiar with the economic laws of supply and demand? A. Yes, sir.

Q. Have you studied the operation of the laws

1236 of supply and demand? A. Yes, I have.

Q. And do you know whether or not the economic laws of supply and demand always govern questions of price received for a commodity? A. They do not.

Q. What exceptions are there to the general rule that supply and demand does govern?

Mr. Heller: May we inquire in what industry?

Mr. Rice: Re late your discussion to the live poultry industry.

Mr. Heller: Is that limited to the live poultry industry?

Mr. Rice: Yes.

A. For several years in studying price-making factors in the live poultry market, at times I was unable to determine exactly how supply and demand factors, as we think of them, actually affected prices. Going on the markets and studying the industry throughout the city I became convinced that at times unfair methods of competition and factors of sentiment——

Mr. Heller: I object to the characterization he is making of unfair methods. Let him state just what he found and 1238
where he found them.

The Court: I suppose that is true. Just state what you mean. Instead of using the words "unfair methods," describe what methods of competition you found that affected it.

The Witness: All right.

Mr. Heller: Let him state when and where.

The Court: You can get that in cross examination if you do not get it before.

1239

Q. Tell us what these practices are that you refer to that disorganize the normal functioning of the laws of supply and demand. A. For an illustration, I visited several of the markets in the city——

Q. Just one moment, Mr. Termohlen, before you give us specific illustrations answer the question directly, tell us what competitive practices there are in the live poultry industry of New York which have tended to disrupt the normal functioning of the laws of supply and demand.

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Mr. Heller: I object to the form of the question. Counsel is calling for a conclusion without any basis for it.

The Court: No, he is taking his statement; this witness stated that certain unfair competition existed. What we want, Mr. Termohlen, we do not want you to state that you found unfair competition produced those results, but just tell us what the things were. Do not pick out specific instances, tell us in general terms

1241

what was the kind of competition which you found affected it other than the laws of supply and demand.

The Witness: Combinations of groups in the trade for the purpose of affecting prices without any direct reference to the supply or actual demand, is one illustration.

Q. Give us all of them, all of the competitive and trade practices which you found to exist in the live poultry industry and which tend to dis-

1242

rupt the normal functioning of the laws of supply and demand. You say that one of them is combinations in restraint of trade? A. That is right.

Q. What is another? A. Another one would be the selling of poultry that is unfit for human consumption.

Q. How does that tend to disrupt the normal functioning of the laws of supply and demand? A. Through the fact that people that have that type of poultry will offer it at a price that is considerably out of line with the going price. That results in their competitors, in order to meet their competition, posting a price in their

place of business or offering their product for sale at that same lower price in order to meet that competition.

Q. And just what effect does that have upon the price level? A. Then that starts a vicious cycle which gradually will go out from that one center, and then affects the wholesale market, and then in turn affects the shipper——

Mr. Heller: I must object to this kind of testimony; they are mere conclusions. He is an expert on diseases of chickens, 1244 as I understood yesterday.

The Court: He has qualified now as an expert on economics. Now, he is giving his version of what acts in the trade would affect the price.

Mr. Heller: I shall have to have some more testimony with reference to his qualifications as an economist.

The Court: All right.

Mr. Heller: I merely consented yesterday that he be qualified as an expert on diseases, not as an economist. 1245

The Court: I understand, but he has testified today that he has studied economics. Now, he was asked if he was familiar with it, and there was no objection. If you object to it I will let you examine him as to his qualifications.

Mr. Heller: I think the District Attorney should qualify him as an expert before he qualifies.

The Court: I understand, but I give you permission, if you question his qualifications you may examine him as to them,

you may cross examine him as to that, only as to his qualifications.

Preliminary cross examination by Mr. Heller:

Q. Will you state what your qualifications are as an economist? What training have you had? A. I received a master's degree in agricultural economics in Iowa State College in 1928; and as I said yesterday, since 1927 I have been a staff member until August 2, 1933, of the Agri-
1247 cultural Extension Session and Experimental Station at Iowa State College, as an economist.

Q. How long were you actually at the college that you speak of? A. I went on the staff in August of 1927—I went, it was in the fall of 1926 I became a part time research worker in the Agricultural Economic Section.

Q. For how long a period of time were you on the staff at the college as an instructor or as an assistant professor or as what? A. From August, from September of 1926 until August of 1927, I was a part time research worker special-
1248 izing in poultry and egg marketing.

Q. Where was that? A. At Iowa State College at Ames, Iowa, from August of 1926.

Q. What did your research work consist of? A. It consisted of studying the marketing of eggs and poultry in the State of Iowa, and their relation——

Q. It was limited to the State of Iowa, was it not? A. The study of outside prices and markets where we shipped our product to, and the per cent. of product that went to those markets.

Q. As far as it affected the State of Iowa? A. As far as it affected the State of Iowa, that is true.

Q. Were you on a paid staff as an instructor? A. As a research worker.

Q. As a research worker? A. That is right.

Q. What compensation did you receive? A. At that time I got $75 a month as part-time worker.

Q. Did you write a book? A. I prepared a thesis, Master's Degree thesis.

Q. In order to get your degree? A. That is right.

Q. That is an essay? A. Yes. 1250

Q. Necessary for the procurement of a degree? A. That is right.

Q. Did you write any other book on the subject? A. Since 1927 I have written several bulletins.

Q. Bulletins? A. That is right.

Q. Did you write any books? A. Well, I have one in the course of preparation that I eventually hope to publish.

Q. The bulletins were written in connection with your work for the Government? A. For the State of Iowa.

Q. For the State of Iowa? A. That is right. 1251

Q. What other training did you have thereafter? A. After August of 1927, I have been an extension worker and a research worker for the college up to August of 1933, in agricultural economics.

Q. For the State of Iowa? A. That is right.

Q. What other work did you do after that? A. Well, since August of 1933, I have been a member of the Agricultural Adjustment Administration.

Q. And your functions there are what? A. As, starting a year ago, as senior agricultural

economist, and then in July of this year as principal agricultural economist.

Q. What are your functions? A. I have charge, as I said yesterday, of the poultry unit of the General Crop Section of the Agricultural Adjustment Administration.

Q. In your studies for the State of Iowa, during the period of 1926 to 1933, just what did you do? What do you mean by research work? A. Studied the effects of price upon our product;
1253 the effects of consumer demand upon our product there; the effects of various trade practices among our people there, and the effects of trade practices of people on the city markets; and the effect that they might have on our product there, the movement of our product through interstate commerce.

Q. What is the percentage of poultry shipped from the State of Iowa in comparison with other states? A. Iowa produces about 8 per cent. of all of the poultry.

Q. All of the poultry? A. That is right.

Q. Taking 100 per cent. as the unit? A. That
1254 is right.

Q. 8 per cent. is produced by the State of Iowa? A. That is right.

Q. And your study was limited to what effect that 8 per cent. would have on price structure? A. No, what effect the price structure in the city market would have on our prices in the country, and the movement where we should move our poultry and our eggs, and what kind of poultry and eggs we should move, and angles of that type.

Q. Now, in your studies of that, what did you take into consideration in determining where your poultry should be sold? A. The type of product that was desired on a market, provid-

1255 ing we could find out what kind of product was wanted on that market. I can give you a concrete illustration, if you wish it.

Q. Do. A. When we had the disease situation in Iowa in 1925, it was followed again in 1926, and 1927; some difficulties, and in 1928 we started a very definite program to educate our farmers as to the type of poultry that was wanted; educate our dealers. At that time I came to New York during my vacation and made a direct study of inspection here, of the type of poultry—

1256 Q. What year was that? A. That was in 1928, sir, I believe in August and early September of 1928.

Q. Where did you come to when you came here? A. I came to one—one of the first places I went to was the office of Dr. Ives.

Q. The gentleman who testified here the first day? A. That is correct, and he let me have one of his men and I went to the 60th Street Market and I spent a couple of days examining cars.

Q. That was in 1928? A. Yes.

1257 Q. In the Summer time? A. That was in the—

Q. During your vacation? A. Yes, August to early September.

Q. How long did you stay here? A. I was in New York for a week.

Q. When did you come back to this State? Did you thereafter come back to the State for further research? A. Back here?

Q. Yes. A. I have been back here practically every year.

Q. For how long a period of time? A. Varying from three to four days to as much as two weeks.

Q. Each year? A. That is right.

Q. In connection with your studies or your research work for the State of Iowa? A. I did that in my vacations in order to better qualify myself.

Q. And beside Dr. Ives' office did you go anywhere else? A. Oh, yes, I went to every corner of the city and every part of the trade and visited to see how they handled the product.

Q. Just whom did you visit? A. Well, that is
1259 rather difficult to tell you directly.

Q. What do you mean by every part of the city, every corner of the city? A. I went, for instance, to the 60th Street Market, I went to West Washington Market, and then I went to various parts of the city to visit slaughter houses, chicken stores and chicken stands.

Q. Do you remember any of the places you visited? A. I cannot tell you definitely.

Q. Did you do that every year you came into the city? A. Practically every time.

Q. You did the same thing every year? A. I would visit somebody on the market.

1260 Q. You mean West Washington Market? A. There, or go up to the East 60th Street Market.

Q. That was after 1928? A. That is correct.

Q. You came here and visited the West Washington Market or the Terminal? A. Yes, or I would go browse around the city, various sections, go into chicken stores, chicken stands, or the like, and see what they were doing, the type of poultry that was being sold.

Q. Could you ascertain whether that poultry came from the State of Iowa or Chicago or anywhere? A. I was not interested as to whether it came from Iowa alone, because we compete with the rest of the United States.

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Q. And your competition is limited to 8 per cent.? A. That is a pretty big percentage from one State.

Q. Where did your poultry go to, most to? A. Poultry goes throughout the entire United States, but a great deal of it comes to New York.

Q. Is the poultry good poultry that comes from your State? A. A lot of it is good poultry; some of it is poor poultry.

Q. Edible? A. Try to get it edible; not always, because the outlet some of the people have.

1262

Mr. Heller: I object to his qualifications.

The Court: Objection overruled.

Mr. Heller: Exception.

By Mr. Rice:

Q. Mr. Termohlen, you stated that 8 per cent. of the live poultry, or all the poultry produced in the State of Iowa. Did you mean 8 per cent. of all of the poultry produced in all of the United States? A. That is correct; on an average, that is true.

1263

Q. You were not referring to the percentage that Iowa poultry contributed to the New York consumption? A. No.

Q. Mr. Tenmohlen, you were describing the effect of the sale of diseased and unfit poultry upon the price received for poultry received in New York City. Will you complete your description of that? A. I believe that I had gotten up to the effects on the wholesale price. The fact that a tremendous number of people, as a result of even one unfair competitive practice, would not pay the price for poultry, that then is reflected through the commission man to the shipper

1264 who ships the product to the commission man through interstate commerce.

Q. How is this matter of price reflected from the wholesaler to the commission man and then to the interstate shipper? A. If the slaughter house man refuses to pay the price, the commission man is going to lower his price so that he can get together with that individual. As a result, your price structure drops.

Q. What does that mean as to the amount that the interstate shipper receives for the commodity
1265 which he ships to New York? A. It means that he receives less.

Q. What other effect does the sale of poultry unfit for human consumption in the New York market have upon this course of commerce? A. Because if the price level goes down people will seek then the type of poultry that they can send to the market at that particular price. You must remember that it is possible in the country to ship your product either in the dressing plants or ship it alive, and therefore very frequently it is found, and it is particularly true in the great
1266 Middle West, the dressing plants can dress a product and hold it in storage, but you cannot do that with live poultry because it is perishable. The better types of poultry could move logically into the dressing plants and the poor types move into interstate commerce. Then your flow of better types of poultry in interstate commerce is lower.

Q. As a result of what? A. As a result of this lower price level. Your movement then is lower. We must remember that it costs just as much to ship a pound of poor quality poultry as it does to ship and handle a pound of high quality poultry.

1267

Q. And what is significant of that? A. It definitely tends to obstruct the flow of commerce, because then that man has less chance to make a legitimate profit and he is going to seek other outlets for his product.

Q. Well, when a commission man is permitted to sell diseased poultry to a market man and the market man is permitted to sell it to a retailer or butcher, does that have any effect upon the demand for unfit poultry?

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Mr. Heller: I object as not based upon the evidence and calling for a conclusion.

The Court: Overruled.

Mr. Heller: Exception.

The Witness: The commission man has an outlet for poultry that is not edible; that means that some people in the country who are not using the most ethical practices will shift that kind of product into the market.

1269

Q. Now, when the market man is permitted to sell unfit poultry to the retailer and the butcher in New York, does that create a demand for unfit poultry in the New York market? A. I would say that when they do that it actually results in lowering the demand for poultry as a whole in the market.

Q. But first, does it create a demand for unfit poultry? A. Yes, naturally. There are some people that would sell that kind of stuff, and therefore they will buy it.

Q. But does it create a demand for unfit poultry when the market man is permitted to make sales of unfit poultry to the retail dealer and the butcher in New York? A. In times of

1270 economical stress it would particularly, because it gives the people an opportunity to put up prices that apparently are low and which would appeal to the consumer.

Q. What happens if the wholesale market man is permitted to sell his unfit poultry to poultry dealers and butchers? Will the wholesale poultry dealers and butchers resell it to the consumers—I mean the retail poultry dealers and butchers, will they resell it to the consumers?

1271 Mr. Heller: I object to the form of the question; counsel is suggesting the answer.

The Court: That is right.

Mr. Rice: I will withdraw the question.

Q. If the wholesale market man is permitted to sell his unfit poultry to the retail poultry dealers and butchers, what effect does that have upon the sale of unfit poultry to consumers? A. It means more will be sold to the consumers.

Q. Why? A. That man that buys that type of
1272 stuff from the wholesaler, he wants to have an outlet for it and therefore he tries to sell it to the consumer and does.

Q. And does that have a substantial effect upon the demand for unfit poultry in the New York market? A. Well, that product is there, and as more comes in somebody will buy it.

Q. Well, when one retail poultry dealer or butcher engages in the sale of diseased, unfit poultry, what does his competitor do? A. They do the same thing.

Q. What effect does that have upon the demand for unfit poultry purchased from the wholesale market man? A. Well, it makes the retailer

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and those people want to purchase more of it and it starts a cycle that gradually becomes worse.

Q. Well, what effect does that in turn have upon the market man's dealings with the commission man? A. He wants it and asks for a cheaper type of poultry.

Q. And what effect does that have upon the commission man's dealings with the interstate shipper? A. He tells the man in the country, "You can get away with this kind of stuff; ship it in to me. You can take advantage of your competitor."

1274

Q. Is a substantial amount of unfit poultry shipped in interstate channels as a result of this cycle?

Mr. Heller: I object to the form of the question.

The Court: Overruled.

Mr. Heller: Exception.

A. My observations definitely indicate that there is quite a percentage that is so shipped.

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Q. Now, does this chain of results that you have described have any effect upon the quality of the poultry which is sent to the live poultry trade as distinguished from the dressed poultry trade? A. It has a direct tendency to make a lower quality.

Q. What effect does it have upon the buyer in the country when he is faced with the alternative of shipping his poultry to the live poultry market or the dressed poultry market?

Mr. Heller: I must object, your Honor, to all these questions, on the ground that

1276 they call for a conclusion and that they are leading.

The Court: It is only an opinion. I think he ought to give an opinion; I rather hink you might add to the question so it will be his opinion. I will overrule the objection.

Mr. Heller: Exception.

Q. Will you give us your opinion about it?

1277 Mr. Heller: I also object, your Honor, because there is no foundation for him to give such an opinion.

The Court: We are not going to bring him back two or three times. If it is not connected up it means nothing. I will instruct the jury if it is not connected up.

Mr. Rice: I will call your Honor's attention to the fact that already Mr. Tottis testified that 2 per cent. of all the poultry shipped into New York is unfit for human consumption.

1278 Q. Go ahead. A. A man in the country that ships poultry, if he can get a better price for a certain percentage of his poultry to the fellow who has the dressing plant, he will ship that part of his poultry to that firm, and then the other poultry that he has not an outlet to the dresser with, would be shipped into the city markets.

Q. Then you say the net result is that the people in the country will sell their unfit poultry to the live poultry market and defer their better quality poultry to the dressed poultry market, is that true? A. Right.

Q. Do you know whether poultry diseases are contagious? A. Infectious diseases of poultry are contagious.

Q. Do you know what effect the shipment of some diseased poultry in a carload would have upon the rest of the carload? A. If it is enough days in transit some of the other poultry might become sick with certain types of disease.

Q. Do you know whether it often happens that an infectious disease is spread from a few chickens in a carload to the entire car lot? A. Yes.

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Q. Does that happen often? A. Quite frequently, if you happen to be in a period of epidemic.

Q. Now, you have spoken of gappers, just what are gappers? A. That is a bird that is infected with what we call infectious tracheitis, or laryngotracheitis.

Q. Is that a contagious disease? A. Yes, highly contagious.

Q. If there are several groups of gappers in one carload that is shipped into New York, what effect does that have? A. By the time that car gets in, many of the other birds are infected, and some of them die en route.

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Q. Is that disease a fatal disease causing the death of a chicken? A. If allowed to go its full course it is generally, within a period of about seven or ten days as a maximum.

Q. Mr. Termohlen, you heard the testimony of Dr. Ives and Mr. Tottis regarding the inspection of live poultry in New York City? A. Yes, I did.

Q. Are you familiar with the Inspection Service? A. I am.

Q. What opportunity have you had to observe it? A. At various times in the last two years

1282 I have gone on the 60th Street Market with the inspectors, entered cars and followed their regular course of inspection.

Q. Do you know whether or not it is the practice to inspect every chicken, to examine or handle every chicken? A. Oh, no, it is not the practice.

Q. What is the practice? A. The practice is to make a sample inspection, handle certain chickens as was brought out, approximately 200 birds out of the car. It has been explained as
1283 to what a live car was, a picture was shown. There are 128 tiers in that car; 4 sections of the car with 32 tiers in each of the sections, 32 tiers. An inspector goes into the car; he never takes the same tier. In one car he may go in the lower deck at two points, in the middle deck and in the top deck on one side; on the other side he may go into the second deck, and three decks up, and he takes random samples going in here and there through the car.

A person loading a car in the country does not know what section of that car they may
1284 make an inspection of. One time they did make it a practice to put their birds into one section of the car. Inspectors soon found that out, and the effect that this inspection service is here very directly makes people in the country be more careful of putting in poor types of poultry in the car.

The sample inspection method is done because it is the most effective way and it is satisfactory. I have made some study of inspection and grading, and the sample method is used in many products; for instance, grain.

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Q. They do not inspect each kernel of grain, do they? A. No, naturally not. They take a sample in the car, they take a sample of the various layers from the top to the bottom of the car in various parts of the car, making a composite sample of that. That is the same thing that is done, you might say, in a way with live poultry.

Q. How about the inspection of buttermilk and other farm products?

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Mr. Heller: I object to that, your Honor.

The Court: We are not dealing with buttermilk.

Mr. Rice: Very well, I will withdraw it.

Mr. Heller: We might assume that one out of four persons had a cold——

The Court: I have ruled.

Q. Do you know whether or not the live poultry inspector in New York looks over the entire carload in a general way?

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Mr. Heller: He has already answered that, we have been over that for two days, your Honor.

Mr. Rice: This witness has not answered it.

Mr. Heller: Yes, he said it was a sample inspection.

The Court: If he saw enough of them so that he can testify that they generally did, all right, but of course he is not engaged in that work.

Q. To what extent have you observed the New York inspection? A. Well, as I said several times I have been on the market and I watched

1288 inspectors and have gone with them. The first thing an inspector does is to walk out on the outside of the car. The car has been explained. He can see from the outside the general condition of that car and the birds. Then he goes in the car and walks up and down the aisles. If there is any suspicion of that car at all having a great deal of poor poultry in it he comes back several times after making his original inspection,

1289 Q. Have you studied the effect of failure to inspect live poultry on the New York market upon the market conditions? A. Failure to inspect poultry in the New York market would mean that people would take advantage of this market and more poor poultry would come to the market, and as a result you would directly affect your consumption of live poultry.

Q. Would it have any effect on the interstate shipment of poultry unfit for human consumption? A. Naturally, if a person knew it wouldn't be inspected here he would take advantage of the market and ship more poultry.

1290 Q. Would failure to inspect poultry have any effect upon feeding of poultry prior to unloading? A. Yes, it would have a very direct effect. A person would, a car man would, feed that car as they did years before inspection service went into effect, with all kinds of products, as was brought out, sand, gravel, cement, the use of wheat products that would plug the birds, all those things are common practices that used to be used before inspection service went into effect. That is also done in the country, if they do it here they do it in the country, and the birds get two doses of it.

Q. Have you observed that in the country? A. Yes; I worked in produce houses back in 1925 before this Inspection Service went into effect.

Q. Did you work in produce houses that were supplying live poultry for the New York market prior to the Inspection Service of 1926? A. That is right.

Q. What did you observe? A. Well, I found in some of the plants they had a bin of sand and gravel, and they would feed birds before they were loaded on a live car with that sand 1292
or gravel because they knew the car man was going to do the same thing when it was in transit. At other places they would have a bin of wheat products that they would use to feed the birds and constipate them, as it was brought out yesterday, plugging up the birds. That was a very common practice.

Q. Do you know whether that practice changed after the inspection went into effect in 1926? A. Yes. I do not believe you would find a bin of gravel in one house in the State with which I am familiar at the present time. 1293

Q. The State of Iowa? A. That is right.

Q. Does that failure to inspect shipments of poultry coming to the New York market have any effect upon the price received by the interstate shipper? A. Yes, it will have an effect, because it was brought out by Dr. Ives that volume receipts picture is given to people in the country through the results of the inspection reports. If any large number of people would not have inspection, it would mean that a volume of poultry would come in that would not be properly pictured, and then the persons who study the supply side and the demand side would

1394 not get a true picture of the supply picture, and that would have a direct tendency to affect price. That is why, again, an unfair method may affect prices—tends to distort the market values.

Q. Are you familiar with the practice of straight killing as required by the Live Poultry Code? A. I made some study of it since this Code was proposed.

Q. In New York City? A. Yes.

Q. What is the practice of straight killing?

1395 A. The practice of straight killing is to kill the poultry as it runs in the coop, the buyer being allowed to buy half a coop or a full coop, or several coops of poultry, and the poultry is killed on that basis rather than allowing the selecting of individual birds.

Q. Do you know what would be the effect of a uniform enforcement of the straight killing practice?

Mr. Heller: I object to that.

Q. (Continuing.) Upon the type of poultry

1396 shipped into New York?

Mr. Heller: May it please your Honor, I object to this question. He has made a study of the situation for two or three months since this Code has been enacted. He certainly cannot testify, no human being can testify, what effect it will have in the future.

The Court: I do not think he means it that way.

Mr. Heller: That is what he asked him.

The Court: I understand, but I do not think that is what he means.

Mr. Rice: If your Honor please, we are prepared to show that prior to the adoption of the Live Poultry Code, members of this industry urged the adoption of the straight killing provision.

The Court: I understand. I mean, you are asking him especially what would be the effect. That is what counsel objects to.

Mr. Rice: Very well. I will rephrase the question.

The Court: Would it cause a change in practice,—of course, if that is what you are trying to get, he probably can tell you that. 1298

Mr. Rice: That is precisely what I mean.

Q. Would the uniform enforcement of the straight killing practice in New York City effect a change in practice on the part of shippers? A. It is my opinion that if straight killing were thoroughly enforced and lived up to in the city, that the next step that would happen would be a request, very definitely, on the part of slaughter house operators, that the commission men reflect back to their farmers—or the shippers in the country, the demand that poultry be graded, and it is very easy to grade. It would not be difficult to grade a car of poultry in the country. 1299

Q. At what time? A. It could be done in the country, provided they had a direct outlet for a graded product here in this market. That would mean a truer reflection of price based on value for quality to the people in the country,

1300 would give them a direct encouragement to raise a better quality product and more of it.

Q. Do you know whether the practice of selected killing has any effect upon the market price for live poultry in New York? A. Directly of the opinion that it does.

Q. Will you explain it? A. A man comes into a slaughter house early in the morning to buy his poultry. If he selects poultry, and goes from coop to coop, maybe he wants 50 birds, and he picks four or five birds out of this coop and four
1301 or five birds out of another coop, he handles them roughly, sometimes may break a wing or a leg, because birds will very easily have their legs and wings broken, their bodies are bruised, and if he selected a certain number, the next man that comes in sees very soon that those birds have been selected, and he will not pay the price that the man who first came in paid for those selected birds, and as a result, by the end of the day, the slaughter house operator must take a considerable loss for the last birds that he sells than the first few that he has sold.

1302 Q. What is the net effect upon the aggregate price received for all the poultry, the good and the second rate poultry? A. The people with the birds that have been picked out, second or third pickings, have a bird, the quality of which is very little different than the first. They offer those for less price, and competitors then want to meet that competition and will not pay the price, and as a result the market level will drop.

Q. Does that have any effect upon the price received by the interstate shipper? A. If the price drops in here, the price drops in the country. Very close correlation to it.

Q. You spoke of damage in handling the chickens during the process of selecting them from the coops. Is a chicken a delicate animal, more so than other live stock? A. Well, their bones are not very heavy, they are easy to break; it is easy to bruise the skin of the bird, tear the skin, and I think they are more delicate than cows and lambs and hogs, and products of that kind.

Q. Does the practice of selected killing have any effect upon the kind of poultry, that is, the quality of the poultry, shipped into New York? 1304
A. I think it does.

Q. In what way? A. If value goes down because of that type of practice, they cannot pay the price for the poultry, and, naturally, there will be a tendency to not ship as good poultry into the market. It may be temporary, price levels affected, but later on there is an attempt to ship in better poultry again. We have that circle continuing.

Q. Do you know to what extent poultry is considered a cash commodity on the part of the farmers who raise the chickens? A. It is one of two 1305
cash commodities. That is, by cash commodity I mean a commodity that the farmer has some income from every week out of the year.

Q. And does the sale of these cash commodities have any direct effect upon the products which the farmer buys? A. Yes.

Q. Currently? A. Yes.

Q. What effect? A. If the farmer does not get good return for his eggs and poultry, he buys less of the current products that he needs to buy, such as food supplies, clothes, shoes, gasoline for his car, and so forth.

1306 Q. How quickly is that effect reflected? A. It is reflected very quickly, because each week they get that income from their eggs and poultry.

Q. Just how quickly is it reflected, then? A. I would say practically immediately.

Q. Within a week? A. Yes.

Q. Mr. Termohlen, have you made a study of the receipts of freight poultry in New York? A. Yes, we study the receipts.

Q. Have you compiled a table showing the re-
1307 ceipts of live poultry in New York from 1927 to 1933? A. Yes.

Q. From what figures have you obtained the material for this table? A. From the figures of the Division of Dairy & Poultry Products of the Bureau of Agricultural Economics.

Q. They are official Government publications? A. That is correct.

Q. I hand you this paper and ask you whether this is the table that you prepared of receipts in New York, of volume of receipts, from year to year? A. Yes.

1308 Q. Do you know whether or not those figures are accurate? A. I am certain they are accurate.

Q. An accurate transfer of what is contained in the official public document designated at the footnote of that chart? A. Yes.

Mr. Rice: I offer the table in evidence.

Mr. Heller: I have no objection to the table itself, but the writing or characterization of the table we do not want it in.

Mr. Rice: With counsel's consent we will transfer this table with the footnote on two separate sheets of paper and substitute that for this exhibit. It is rather difficult to read it into the record because there are so many figures.

The Court: Then why not just cut the top off and you will not need to substitute.

Mr. Rice: All right, your Honor.

(Marked Government's Exhibit 22 in Evidence.)

Q. Now, Mr. Termohlen, have you prepared a similar table showing the price per unit received for fowls, chickens, marketed in New York from the period commencing 1927 up through 1933? A. Yes. 1310

Q. And that has been prepared in the same manner? A. Yes.

Q. And this is the table, the one I have just handed you? A. That is correct.

Mr. Rice: I offer this table in evidence.

(Marked Government's Exhibit 23 in Evidence.)

Mr. Rice: May we have it understood, your Honor, that in view of the fact that we are offering only the table, that this table represents the transcript of the price per unit received for the various classes of poultry designated in the table, in the New York market? 1311

Mr. Heller: I do not know what you mean by unit.

Mr. Rice: Per pound.

The Court: Does it appear on there?

Mr. Rice: It appears on the statement introducing the chart, that this relates to the New York market. It does not appear in the body of the table itself.

The Court: Then why not put a line right at the top reading, "Price Per

pound—New York Market"? Othewise the jury when they get it will not know what it is.

Q. Mr. Termohlen, have you completed the relative value of all poultry marketed in New York in 1927 as compared with the value of all poultry—live poultry—marketed in New York in 1933?

Mr. Heller: I object to that as too remote in period of time, your Honor, that it takes no cognizance of any considerations arising within that time.

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The Court: Well, he has got to go back of 1926, I know that.

Mr. Heller: But there are so many other elements, your Honor, involved between 1926 and 1933, that we don't know anything about.

The Court: That is right, but still I can see that he must go back of 1926 for some of his argument. I think I will take it, but the jury will have to take into consideration that there are many elements that might be presented in the difference between the earlier date and the present.

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Mr. Heller: Your Honor is admitting it?

The Court: Yes, with that understanding.

Mr. Heller: Exception.

Q. What is your answer? A. I have prepared an estimate of the total value of 1927 as compared to 1933.

Q. And what was the approximate total value of all live poultry marketed in New York City

in 1927 as compared with 1933? A. Approximately $57,000,000 in 1933 and $27,000,000—no, that is wrong, it is $57,000,000 in 1927 and $27,000,000 in 1933. That is approximately 47 per cent. of the value of 1927.

Q. That is, the live poultry sold in the New York market in 1933 is only about 47 per cent. of the value of the live poultry sold in the New York market in 1927? A. That would be my estimate.

Q. And what is that estimate based on? A. It 1316
is based on the receipts figures that have been submitted and the price of figures.

Q. Which have also been submitted? A. Yes, sir.

Q. And that is the volume of receipts of freight poultry in New York during this period of time, and the prices per unit over the same period of time?

The Court: When you speak of units you mean pounds?

Mr. Rice: Of price per pound, yes, your 1317
Honor.

The Court: So we will have that understood. Whenever you say unit in this particular you mean pounds, is that right?

Mr. Rice: Yes.

Q. Now, Mr. Termohlen, has the Department of Agriculture prepared a chart from the official Government figures showing the relative receipts of live poultry and dressed poultry in New York during the period from 1921 through—up to and through 1933? A. Yes.

Q. And is this the chart that has been so prepared? A. Yes, it is.

1318 *W. T. Termohlen—By Govt.—Direct*

Q. Will you explain what this chart is and how it was prepared? A. This chart is a result of the study that is being made by Mr. Sprague of the Division of Dairy and Poultry Products in the Bureau of Agricultural Economics. It shows on a percentage basis, or, economically speaking, what we term an index basis, it means that we take a period in this, for instance 1925 to 1929, and make an average of that period and call that 100. On that based period of 100,
1319 using it as a percentage figure, we chart the other years. In that way we can take two or three or four or five different commodities and different units, and reflect them by picturization—give a direct picture. In this instance the trend of population of New York is given in heavy type, that is a heavy black line and the trend of receipts of live poultry is given in a dashing line and dressed poultry is given in a dotted line. This shows that dressed poultry receipts have tended to go along with the population moving upward, in fact in recent years
1320 slightly above with the exception of 1932, and since 1927 the receipts of live poultry as they relate have gone down.

Q. What are the lines labelled "Live Poultry" computed on, what figures? A. The figures that have been submitted back to 1919, the beginning of the Inspection Service——

Q. I mean what Bureau of the Government? A. Bureau of Agricultural Economics figures.

Q. They are official figures, are they, Mr. Termohlen? A. That is right.

Q. How about the figures for dressed poultry? A. The same.

Q. And the line of dressed poultry you have on that chart is computed on the basis of official figures? A. That is right.

Q. How about the population trend in New York? A. That is taken from the Census Bureau.

Q. Official figures of the Census Bureau? A. That is right.

Mr. Rice: I offer this chart in evidence.

The Court: There being no objection it is received. 1322

(Marked Government's Exhibit 24 in evidence.)

The Court: Do you want the jury to see it?

Mr. Rice: Yes.

The Court: All right, let them look at it.

(Exhibit handed to the foreman of the jury.)

Q. Now briefly, Mr. Termohlen, what has been the relative trend in receipts of live and dressed poultry in New York during the past six years? 1323 A. Receipts of live poultry have been downward, and receipts of dressed poultry upward.

Mr. Rice: That is all.

Cross examination by Mr. Heller:

Q. Where are chickens raised and who raises them? A. They are raised in every State of the United States; they are raised by farmers, general farmers, commercial poultry farmers.

Q. What does the quality of the chicken depend upon, whether it is good or bad, as far as the farmer is concerned? A. Several things.

1324 Q. Let us have them. A. The first thing, it depends on the value of the product, the price he gets.

Q. Before they are raised, that is what I want to know. A. Before they are raised?

Q. Yes, what does it depend upon whether a chicken is a five-pound chicken or a two-pound chicken or of good quality or tubercular before sale? A. The price that he gets for——

Q. You do not get my question——

1325 The Court: He wants to know, he is not talking about the price, he is asking about the chicken in and of itself, what determines its weight, its freedom from disease or its suffering from disease.

The Witness: That is right; the methods of handling, feeding, breeding and so forth; but those are the results in many ways of the price——

Q. I didn't ask you about the results, we will come to that a little later, this is the foundation,
1326 let us get the foundation. That depends on the farmers, what feed he gives the chicken, how he raises it, how he exposes them? A. In the first step.

Q. That is right, so that before sale by the farmer he may ascertain whether a chicken is of good quality or of bad quality? A. That is correct.

Q. And then you say these chickens are sold from the farmers to certain individuals, sort of collectors of poultry in the different states? A. That is true.

Q. Do you know in your own State of Iowa how many farmers there are and how many

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chickens each particular farmer raises? A. Oh, I can give you a rough estimate of it; I do not try to keep those figures in mind all the time.

Q. Approximately. A. There are approximately 213,000,000 farmers in Iowa——

Q. 213,000,000? A. 213,000, pardon me, 213,000 farmers in the State of Iowa. The average size flock is about 160 birds, roughly.

Q. 160 birds per farm? A. Roughly, yes.

Q. Is that uniform in the other states, the same proportion? A. No.

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Q. Have you made a study of other states as to how many farmers there are and as to how many chickens on an average each farmer raises? A. There are approximately five and a half million farms that raise poultry, I think roughly somewhere around 60 birds is the average over the United States.

Q. 60 birds per farm? A. That is correct, that is laying flocks.

Q. In other words the income of these farmers is measured as far as the chickens is concerned by 60 in number, leaving out all the other income that he may have? A. That is right.

1329

Q. So that one farmer having 60 chickens may want to dispose of them because he is in need of money, while another may not do so, is that so? A. They very rarely dispose of all of them at one time.

Q. Would you say that if ten farmers in Iowa disposed of ten chickens apiece at a smaller price that that would affect ten farmers in a different state? A. Well, that same thing would probably be happening to ten farmers in another state.

1330 Q. If they disposed of ten chickens apiece, ten farmers in Iowa, would you say that that would affect the price that each farmer is to get for their chickens? A. I do not quite understand your question.

Q. Doesn't it also depend upon what a farmer is going to get, depending upon the location, how far he is from the source of demand, isn't that something to be taken into consideration? A. Freight costs.

1331 Q. That goes into the price structure, does it not? A. That is correct, as far as the farmer is concerned.

Q. So that a farmer situated further from the source of demand would have to charge a little less to make up for the freight, would he not? A. Normally that is correct.

Q. Do you know whether there is a Code adopted for any other place except for the metropolitan area of the City of New York concerning this industry?

1332 The Court: You do not really mean that, do you, the metropolitan area of the City of New York, do you?

Mr. Heller: Yes, that is the only Code that I know of, the State of New York, metropolitan area of the State of New York.

Mr. Rice: Not of the State of New York, there are three States, the State of New York, State of Connecticut and State of New Jersey.

Mr. Heller: One county of Connecticut, as I take it, and one county of New Jersey.

Mr. Rice: Two counties of New Jersey.

Mr. Heller: Two counties of New York.

Q. Do you know of any other Code governing the poultry industry? A. Yes, one other.

Q. Where? A. One that governs, the United States Commercial and Breeder Hatchery Code.

Q. A hatchery code? A. That is right.

Q. What does that mean? A. That covers those persons who commercially hatch chickens and then sell them in turn to farmers.

Q. Do you know of any code that has been promulgated for the City of Chicago? A. Not one that is promulgated. One that we are working on. 1334

Q. It is not effective as yet? A. Not yet.

Q. The conditions that you speak of, they existed since the year 1926, or prior to that time? A. Some of them back before that time.

Q. So that—let us see. What date, about, what year? A. Are you speaking about——

Q. These general conditions that you say affected the industry here in the metropolitan New York area, here in New York or elsewhere.

Mr. Rice: I object to that question as being too indefinite to permit of an intelligible answer. I have no objection—— 1335

The Court: What is the question?

(Reporter repeated the last question.)

Q. (Continuing.) For how long did they exist?

The Court: I do not know what you mean exactly. I suppose you should interrogate him with reference to the point of time, the conditions that existed at some time, and did they exist here solely in New York, or were they throughout the country? If that is what you mean, I do not think he understands you.

1336 Mr. Rice: Furthermore, this witness has spoken of a great number of competitive practices and evil conditions, such as the sale of unfit poultry, sale of uninspected poultry, and I think the question should be divided up.

Q. The conditions of unfit poultry, of sale of selected chickens, or of diseased chickens, are those conditions recent ones, or did they exist in the year 1926? A. I would say that some of
1337 them existed in 1926, but from all the evidence submitted to us by the people in the industry, they became more prevalent within the last two years.

Q. What conditions existed in the year 1926 that you spoke of on direct examination, that exist today? A. I don't quite get what you are driving at.

Q. You have stated that certain evil conditions exist and have existed for the past year, haven't you, on direct examination? A. That is right.

1338 Q. Now, tell us how many of those evil conditions, and describe them, existed prior to a year ago, and for how long a period they did exist? A. I think that straight—the selected killing, for instance, has become more prevalent each year, as I understand, since—for about ten years—within the last ten years it has become a more direct practice and each year that became worse.

Q. Do you know of any law that prohibited any man from selecting his chickens and selling whatever chickens he desired to in 1926, 1927, 1928 or 1929?

1339 Mr. Rice: I object to the interpretation of the law. That is a matter for the Court. I think that is immaterial, whether this witness knows the provisions of the law.

Mr. Heller: He testified to that as being an evil condition.

The Court: I will let him answer, if he knows of any law that relates to that in any way.

1340 Q. Do you know of any?

The Court: Generally.

A. I don't know of any law.

The Court: You are not an expert on law, are you?

The Witness: No, I know nothing about it.

1341 Q. Do you know whether or not any provisions were made by your department to remedy this condition at the source of supply during the past five years? A. My department has only been in existence for a year, slightly over a year.

Q. Then the statements that you have made concerning the industry are statements derived from information given to you by others? A. Partially.

Q. You have no personal knowledge of all the conditions, as stated by you on direct examination, existing during this entire period of time? A. Naturally, I have not lived in New York all that time. I would not know them all, but I have gotten my information from people that I feel have a direct knowledge of the industry.

1342 just like anyone who is a student of marketing must get his information from others.

Q. Can you tell me how many carloads of diseased chickens have come in during the past month from your State? A. I don't imagine there is any full car of diseased chickens that has come in.

Q. Can you tell me how many pounds of diseased chickens came in from the State of Iowa during each month of this year? A. No, I haven't tried to get that information.

1343 Q. Can you tell me how many pounds of diseased chickens have come in from any other State during the period of every month of this year? A. We could get that information from Dr. Ives' figures, which have been submitted.

Q. Have you any figures to show that so many pounds of diseased chickens have come in monthly and yearly for the past six years from each particular State? A. We could get that.

Q. Have you seen such figures? A. At various times I have seen figures of that type.

Q. You have seen those figures? A. When
1344 discussing them with Dr. Ives in his office.

Q. When was that? A. I have been in his office several times in the last few months.

Q. Did you discuss that with him prior to the last few months? A. As far as my own State is concerned, yes.

Q. As far as the other States are concerned? A. I have not.

Q. Has he shown you, and have you examined statistics showing the exact number of pounds of diseased chickens that came in month by month and year by year from the various States

of the United States to the City of New York? A. Oh, he has his inspection reports.

Q. And the inspection reports, I take it, means the chickens that he killed in New York City before delivery to the market men, is that correct? A. That is right.

Q. That is, chickens that he found upon examination were unfit for human consumption, is that correct? A. That is right.

Q. That does not indicate how many number of pounds of diseased chickens came into the 1346
City of New York, does it? A. It gives a fairly good index.

Q. What do you mean by a "good index"? A. They can estimate from those figures the poundage that they actually handled and then relate those to the actual poundage that has come in, used as a sample.

Q. I take it, then, that the figures presented by Dr. Ives, namely, that so many pounds of chickens were destroyed, because upon examination they were unfit, did not actually represent the entire number of poundage of chickens that 1347
came in that were diseased? A. Well, that is natural. That would not represent the entire amount.

Q. Didn't I hear you testify on direct examination that by this sample inspection you get a good idea? A. Absolutely.

Q. As to whether a carload is diseased or not? A. Absolutely.

Q. So that upon the various inspections made by these various inspectors, and having ascertained that the rest of the carload is safe for human consumption, that the rest did not con-

1348 tain any diseased chickens, is that a correct statement? A. I don't get your question.

Q. The inspectors having inspected various carloads and having destroyed chickens that they thought were diseased or unfit for human consumption, would you then state that the rest are fit for human consumption? A. I don't believe that anyone has made a statement that all of the rest would be.

Q. Would you say that the inspection is an inspection or merely a sample inspection under
1349 the circumstances? A. I would say it was a sample inspection, but very adequate.

Q. That is, it is an adequate inspection? A. Yes.

Q. Well, if it is an adequate inspection, would you now state that the balance of chickens which are passed with an inspection slip, are fit for human consumption? A. I would say no, but if a buyer that would buy a product coming out of a car that had had a good many birds taken out by the inspector, without careful examination, that is, a careful examination of the birds
1350 left, would not be truly representing the people to whom he sells.

Q. Can you tell me what effect the inspection has so far as the purchaser is concerned? May he rely upon it before he eats his chicken? A. He should if the people in the trade are truly ethical.

Q. Do I understand you to say that there is an inspection required of all poultry that comes in for the purposes of detecting chickens that are diseased and unfit for human consumption; is that correct? A. That is right.

Q. And we are to rely upon such an inspection, are we not, or do you now state that it is inadequate, or no inspection? A. I state that it is adequate. 1351

Q. Well, do you now concede that all of the chickens that have been inspected and passed as fit for human consumption, if nothing else happens to them in transportation, that such chickens are fit for human consumption? A. No, I do not.

Q. You still maintain the inspection is adequate when—— A. From the standpoint of sound economy, yes. 1352

Q. From the standpoint of health? A. And from the standpoint of health if the people are ethical in the trade and live up to those practices.

Q. Is John Jones, who buys a chicken from a dealer, is he adequately protected by the inspection laws as they exist today? A. What inspection laws are you talking about?

Q. The one you are talking about, the inspection at the railroad terminal. A. So far as the purchaser is concerned, there are other inspection laws. 1353

Q. I said, is he adequately protected in relying upon the inspection service rendered by some agency of the Government when the poultry comes into the railroad yard? A. The person that buys it at the yard is protected.

Q. I am talking about the ultimate purchaser, John Doe, let us call him. A. Too much might happen.

Q. Then he is not? A. No; I think he does get a lot of protection as a result of it, though.

Q. You would not permit yourself to say yes or no, would you?

1354

Mr. Rice If your Honor pleases, I submit that is an unfair question in view of the very frank answers of this witness.

The Court: Well, he can ask him if he will say yes or no.

Q. Will you say yes or no? A. I don't see why I should to those types of questions.

Q. Do you know and have you the statistics to corroborate your statement as to how many diseased chickens are actually delivered by the
1355 commission merchant to the wholesale slaughter house man? A. I hope to have those statistics as a result of the Code, but I do not have them now.

Q. Then your statement you made on direct examination that a certain percentage of diseased chickens, namely, 4 or 2 per cent.—— A. I did not make that.

Mr. Rice: If your Honor pleases, counsel is confusing the testimony of this witness with the testimony of Mr. Tottis.

1356 Mr. Heller: All right; I will stand corrected.

Q. Is it your statement now or do you admit or do you believe that Mr. Tottis' statement is correct, that 2 per cent. of diseased chickens are eaten by people of the City of New York?

Mr. Rice: I submit that is not within the scope of the direct examination, your Honor. If counsel wishes to make him his witness for this purpose, I have no objection. I do object to the form of the question.

Mr. Heller: I will make him my witness.

Mr. Rice: I object to the form of the question.

Q. Do you make that statement? A. Ask the question again, please.

Mr. Rice: If your Honor pleases, I object to the form of that question.

The Court: Yes, if he is your witness you cannot cross examine. Do not lead him. 1358

Mr. Heller: Very well, your Honor, I will withdraw the question.

Q. Can you state how many diseased chickens are actually consumed by the people of the City of New York? A. I cannot give you the actual number.

Q. You have not gone to the ultimate consumer and taken a statement each and every day and every hour of the day at every market and examined each and every chicken to ascertain whether it was diseased or not, have you? 1359

Mr. Rice: I object to the form of the question as well as the attitude of counsel, in view of the fact that he has made this witness his witness.

The Court: He only made him his witness for a particular purpose. Now he can ask this question. I will overrule the objection.

Mr. Rice: Very well, your Honor.

The Court: Of course, the answer is obvious.

1360 Q. What is the answer? A. Naturally, I haven't done that.

The Court: The answer is no, isn't it?

The Witness: Yes, your Honor.

Q. There is no human being in this world that can say whether or not one or two or one hundred pounds of diseased chickens are consumed by the public of the City of New York? A. Are you asking that as a question? You made a statement.

1361 Q. I am asking you that as a question. A. I would not know of anyone that could at present.

Q. Do you know how many of the alive chickens are consumed in the City of New York? A. What is that?

Q. Do you know what percentage of live chickens—— A. You mean that come into New York?

Q. Yes, come in and are consumed. A. What percentage?

Q. What total amount are shipped from the various States? A. I haven't it right here, but

1362 I can find that out for you.

Q. Well, have you any idea? A. I cannot tell you directly because there are so many statistics that I am in no position at the present time to keep them all in my mind. I will get the information for you.

Q. Did you make an entire study of the situation before you came to court? A. I have made a study of the situation over a period of ten or eleven years.

Q. And you have given certain trends on direct examination? A. Yes.

Q. Don't you think that is an important factor to know? A. Those trends were, yes.

Q. How about the percentage of chickens that are consumed, of the total output, in the City of New York? A. I still don't get your question. I gather that you want to know what percentage of all chickens raised in the United States come to New York and are consumed.

Q. Is 80 per cent. a fair number? A. New York doesn't get any 80 per cent. of all the poultry raised in the United States.

Mr. Rice: I am sure I don't know the figures, but I should like Mr. Termohlen 1364
to get them.

The Court: I don't think anybody testified to that. I think they testified to the percentage that came to New York, that came from out the State and within the State, but nobody has testified here as to the percentage of all chickens raised in the country, that come into the City of New York.

Mr. Heller: I am referring only to live poultry.

Mr. Rice: Does Mr. Heller mean the 1365
live chicken, that is, alive at the time it first commences its journey? Suppose a chicken starts on a journey to a packing house. It is alive until it arrives at the packing house. Is that a dead chicken or a live chicken to Mr. Heller's idea?

Mr. Heller: I am considering the chickens sold in New York City as live chickens.

Q. Do you know that? A. I cannot clutter my mind up with that type of figure. I know where to find the information and if somebody wants

that, I will get it for them, but I don't carry it around in my head; I am not a human——

Q. I know, a walking Encyclopaedia? A. Yes.

Q. Now, have you ascertained what are the principal cities of the United States that consume live poultry? A. Besides New York, there is Chicago, Philadelphia and Boston.

Q. Those are the three principal cities? A. There are four, with New York.

Q. Coming for a moment to your chart, Government's Exhibit 24, did you personally exam-
1367 ine the material which went into the making up of this chart? A. I have seen all of that material at various times; this particular chart one of my men has worked with that man.

Q. You have seen some material that went into it, is that correct, in the making up of this particular chart? A. That is right.

Mr. Rice: Will you refer to the exhibit number?

Mr. Heller: Government's Exhibit 24.

1368 Q. I understand you to say the trend of population in New York City, the metropolitan area, has gone up from the year 1921 to the year 1933?

The Court: You will pardon me, it is the metropolitan area in and about New York.

Mr. Heller: This notation here says population——

The Court: I understand, but the definition is the metropolitan area in and about New York.

Mr. Heller: I do not know of course whether that refers to that.

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Q. What does this refer to, does this refer to the metropolitan area or New York City? A. That refers to New York City here, where the receipts of poultry come in.

Q. Does that also embrace the other counties? A. No,

Q. Merely New York City? A. I am sure of that.

Q. Do you know that 80 per cent. of the poultry that comes into the City of New York is consumed by the Jewish population? A. That is what has been estimated by various people.

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Q. And about 5 per cent. by the Italian people? A. That is what they estimate.

Q. And about 5 or 10 per cent by other nationalities? A. That is what the estimates are.

Q. And the American people consume approximately only, that is American stock, born here and raised here and their families, about 5 per cent. of the live poultry, is that correct? A. That is the estimate.

Q. Have you examined the immigration records as to how many foreigners have come into the City and State of New York from the year 1921 to 1933? A. No, I have not.

1371

Q. Isn't it a fact that we have a quota, is that correct, do you know that? A. I understand that there is.

Q. You know that there is a limitation upon people coming in from other States, other states than the United States, is that correct? I mean Continental Europe. A. You mean other countries?

Q. Other countries rather. A. I know there is a limit.

1372 *W. T. Termohlen—By Govt.—Cross*

Q. And this line that shows there is an increase in population, you cannot explain, can you, whether that increase is of foreign stock or of American stock? A. I could not right at this moment, I could if I went into the figures.

Q. Have you examined those particular facts? A. Not the census figures.

Q. Now, if there is not an increase of this foreign element that consumes these live chickens, then this line of increase in population would mean nothing, is that correct? You would have
1373 to analyze that, Mr. Heller. The fact that they have limited the number of people from certain countries coming in does not mean that the population make-up of the City, for instance, the Jewish population, has decreased, because we would have to take into account, we would have to go into the birth rate and so on, and we may find that the birth rate of the Jewish population was still on the upward trend and has not decreased.

Q. Then you would also have to examine the death rate? A. That is right.

Q. In both the Jewish population, the Italian
1374 and the rest? A. Yes, you would have to do that.

Q. But you are in no position to state now, are you, whether it went up or went down recently, that is the population of these foreign elements? A. I wouldn't say.

Q. You haven't made a study of that, have you? A. I started yesterday to say we were beginning to make a very direct study of it.

Q. In other words, from this period on you are just going into all the details, is that correct? A. As far as I am concerned, not from this period on, but we have been developing this for three or four months.

Q. But this relates here to 1931 and comes right up to 1933, is that correct? A. That is true.

Q. Do you know what particular people are consuming dressed poultry, whether they are Italians, Hebrew, Polish descent, American stock, do you know that fact? A. I would say most all types of people are consuming dressed poultry.

Q. Has your department any statistics showing the place and sale by names of purchasers of dressed poultry for the past four years? A. 1376
My department does not.

Q. Do you know of any department that has such statistics? A. I am not familiar with any studies of that particular type.

Q. Wouldn't that enter into your consideration as to whether or not it is fair to compare the dressed poultry industry with the live poultry industry? A. No, there must be something that is wrong when we have this direct downward trend there and an upward trend in other commodities.

Q. And you attribute that to trade practices? 1377
A. Oh, partially, not entirely.

Q. But you are willing to take those factors into consideration, are you not, other factors than trade practices? A. Naturally, any one of them.

Q. And they should be taken into consideration, isn't that so? A. If they are applicable.

Q. And that requires and necessitates study, is that correct? A. That is right.

Q. You know as an economist there are varying other factors that enter into price structure, do you not? A. What do you mean other factors?

Q. As to whether or not a commodity is to be sold at a certain price, it isn't always supply

1378 and demand, is it? A. Well, it is the measure of supply and demand, but depending upon how you interpret it, on which side.

Q. In other words, it is subject to several interpretations, is that correct? A. The mere fact that you have a certain supply and you have a certain consumption over here is measured by the movement of supply and demand, that isn't the entire index.

Q. That is right, you know there are other factors that must be considered? A. Yes, I said

1379 one of them is unfair practices.

Q. And there are others besides that, isn't that correct? A. Of course there are many economic factors that come in.

Q. Well, let us get to some of them. Do you know that during the year 1929 there were about 642 bank suspensions? A. I do not know the definite number, no.

Q. Do you know that in the year 1930 there there 1,345 in the United States of America and nothing in other states outside of the United States of America? A. I wouldn't say that

1380 today, a few years ago I might, but I can't right now.

Q. Would you say there were——

Mr. Rice: Just a moment, if your Honor please, I object to this line of cross examination. Again if counsel wishes to make Mr. Termohlen his witness I have no objection to questions that are leading; Mr. Termohlen has not discussed economic conditions aside from the live poultry industry.

The Court: He is asking him now simply with reference to the live poultry industry——

Mr. Heller: That is right.

The Court: Whether those bank failures would have any effect upon it.

Mr. Heller: That is what I am coming to.

The Court: That is all he is dealing with now; I think he may ask him that, this is only as far as it applies to live poultry. 1382

Q. Do you know that in the year 1932 there were 2,550 bank failures? A. I do not know that there were exactly that many.

Q. Do you know that in March of 1933 all the banks suspended activities? A. I recall that, yes.

Q. Now, hasn't that something to do in determining whether or not the value of chickens is up or down? A. General economic conditions have their effect.

Q. Isn't it a fact that the stock market conditions has something to do with the price structure and price index level during this entire period of time? A. That is right. 1383

Q. All these factors must be taken into consideration, isn't that correct? A. They must, and also along with this the direct effect and influence that this thing may have upon people in the industry in making the price.

Q. Now, there were certain business failures during this entire period of time 1930 to 1933, were there not? A. Oh, I think that everybody knows that we have had a depression.

Q. And that had something to do with business conditions? A. That is true.

1384 Q. Isn't it a fact that banks have refused to make loans for the past four or five years and that has had some influence on business activities both in this line and in other lines? A. I do not think there is any question of whether it has had any influence.

Q. You know that deflation has something to do with business activities, has it not? A. I would assume it does.

Q. You know that deflation in the issuance of checks or clearing of checks would have some-
1385 thing to do with business conditions? A. All these economic structures have their influence.

Q. And those conditions have existed, have they not? A. That is right, but the strange part of it is that this thing has been going downward since 1927, and those things have only really been bad since 1929.

Q. When you say that in 1927 the value of chickens was $57,000,000 and in 1933 it was $27,000,000, you attribute that as an economist solely to the trade practices? A. I never said that.

Q. Can you attribute them to the trade prac-
1386 tices? A. Partially, yes.

Q. How much, what percentage? A. That I couldn't tell you, and I don't think anybody could.

Q. I agree with you. Now, isn't it a fact that in the year 1927 chickens sold at 38 cents per pound and in the year 1933 at 16 cents per pound? A. I do not think that is a fact. I don't remember whether it is 30. It is 28, isn't it?

Q. There was a difference in the price, was there not? A. That is correct.

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Q. And if a price is lower the total amount is lower? A. Well, surely, that is true.

Q. So that it is inaccurate to say that the volume fell off because of trade practices, isn't it? A. I did not say it fell off entirely, because of trade practices.

Q. You mean the price affected the value of the poultry, if you get more, then the value is higher and if you get less it is lower, isn't that correct? A. That is true.

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Q. You would not, as an economist, ask this jury to take that all into consideration in saying that these trade practices that you claim have affected this price structure in that manner, would you? A. They should take into consideration the effects that it may have, combined with other things.

Q. And these other things you have not mentioned, except in cross examination, is that correct? A. I have answered the questions as they have been asked of me.

1389

Q. And you could not with any degree of certainty or definiteness attribute any particular percentage to trade practice or to the bank closings or to the credit situation, could you? A. I do not think anyone can.

Mr. Rice: May we have a two-minute recess, your Honor?

The Court: Yes. Gentlemen of the jury, do not let anybody talk to you about the case.

(Short recess taken.)

Q. Isn't it a fact that a decided well-established principle of economics is that commodity prices are registered in the form of money? A.

1390 I would not say that that is entirely true. On the exchanges in the markets, the principal market centers, that is true,—in the form of money.

Q. See whether you can agree with this economic principle. When money inflates or deflates every commodity price must be carried higher or lower than it otherwise would be? A. Before I could agree entirely with that I would want to analyze it further. There may be things in there that are not so.

1391 Q. Do you know Professor Irving Fisher? A. I do.

Q. He is the foremost economist at Yale University? A. He is one of the economists at Yale.

Q. And a well-known professor of economy? A. That's right, well known of one school.

Q. Well, if I tell you that he made that statement, would you say—would you accept it now as correct? A. No, I would not entirely.

Q. Have you taught economy anywhere? A. I have in my extension work, the general principles.

Q. Have you taught other people? A. Yes.

1392 Q. A class? A. Not a class, extension work—meeting with farm people and people who handle the products and so forth. I do not teach that type of economics, it is the general application of economics that I teach.

Q. You mean you apply your practical economy? A. Yes.

Q. In this industry? A. That's right.

Q. Now that was not my question; did you ever teach at any college—economics? A. I teach in the extension service of the Iowa State College. Our campus was the entire State.

Q. And how big is your college? A. Oh, about 4,000 students roughly.

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Q. And who is your famous professor of economy? A. At the present time the head of our department is in Washington. We have had some men who have been nationally very famous.

Q. How many members are there in your economy department? A. I cannot tell you, because there are changes from time to time.

Q. How many were there when you were doing research work? A. I would say around ten.

Q. Ten members? A. Somewhere in that neighborhood.

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Q. And you were one of the research directors? A. I was a research assistant.

Q. You actually have never taught a class of students economic principles, have you? A. Not a class of students.

Q. In other words you were limited to the application of economic principles concerning this industry in so far as it relates to farmers and so forth? A. General economic principles as they concern the farmer.

1395

Q. Now isn't it a fact that the unemployment problem must be considered in your survey in determining whether or not these products had any effect upon the price structure and the price level? A. All of these facts are all things that come in this National Industry Recovery Act.

Q. Now going off the standard had something to do with it, did it not—did it? A. I would have to analyze it further before I could answer that and say yes or no.

Q. You have never analyzed all these elements before you came to this court, have you? A. A mere general analysis.

Q. Did I understand you to say that you are now beginning to make a thorough study of the

entire situation for the future, is that correct? A. Certain aspects of it, as they relate to price-making.

Q. Now before you came to this courtroom you have prepared yourself, haven't you, in the testimony you were to give? A. Naturally.

Q. And you went over the facts with Government counsel? A. Naturally.

Q. And you outlined to him what you were going to testify? A. Naturally.

1397 Q. And in preparing yourself to give this testimony did you specifically analyze on paper all these analyses before you arrived at your conclusions as given on your direct examination? A. I took my general knowledge of all these things.

Q. Just general, as you would read a newspaper? A. As I studied the reports.

Q. What kind of reports? A. Well, each month I have laid on my desk a general summary of the whole situation.

Q. For how long a period of time? A. Each month.

Q. From what year? A. Current reports.

1398

The Court (to witness): He wants to know how long have you had them.

The Witness: Since January I have had them put on my desk.

Q. January of this year? A. That's right.

Q. And you base your opinion from the facts as you gathered them since January of this year? A. Before that time I had to make more or less of an analysis for myself.

Q. And what did you consider in making that analysis? A. All business factors that I could get indexes of.

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Q. And did you get an index of all food products? A. We had one.

Q. Did you examine any? A. I used to.

Q. Did you examine any before you came to this court? A. I let my man do it.

Q. You relied upon him? A. Of course.

Q. And what was the general condition in average food products during the same period of time that you discussed relative to the poultry industry? A. To give you the exact figures I would have to look it up.

1400

Q. Just generally how was the condition? A. It varied at different times. I would not want to venture an opinion on that.

Q. You don't know? A. I have a general idea.

Q. Isn't it a fact that all food products came along at about the same line as the poultry industry? A. No.

Q. Isn't it a fact that all industries took the same drop as poultry did? A. Not the same, no.

Q. Similar? A. I would not even say that.

Q. Was it 2 per cent.? A. I would not say that.

1401

Q. When was the lowest period—that is, the lowest prices and the lowest condition of business and the worst condition of employment that you know of—what year, both for this industry and generally speaking the other industries? A. I think 1932 and 1933.

Q. That is a whole year. Can you tell us about what part of the year or what years it is in? A. The early part of 1932 was one of the bad spots.

Q. Isn't it a fact that the worst spot was in March of 1933 when the banks closed? A. It was very bad at that time.

1402 Q. That was the lowest point? A. Since then we have had some improvement.

Q. That is the lowest point for business? A. It might be in certain industry.

Q. The lowest point for employment? A. I wouldn't be able to tell you unless I would go back and look over the charts.

Q. The lowest point for payrolls? A. I would want to refer to charts.

Q. The lowest point for agriculture? A.
1403 Monthly figures do not always mean so much; I prefer annual figures to make any definite statement.

Q. You are familiar with some of these statistics, are you not, as an economist? A. That is true.

Q. Do you know that—when was the highest point beginning 1929? A. Well, I do not know that I can answer that definitely. I do not try to keep all those things in mind.

Q. Do you know a person by the name of Charles Mertz? A. I am not just sure; I have
1404 heard the name some time or other.

Q. He is an economist, isn't he? A. I couldn't tell you, there are so many accountants that I wouldn't be able to tell you directly.

Q. Have you ever read the statistics to be found in the New York Times, Sunday section? A. Occasionally; not very often.

Mr. Rice: If your Honor please, I wish to enter my objection to this line of cross examination. The sole purpose appears to be to have this witness compare the economic emergency prevailing generally in all commodities throughout the country with the economic emergency existing in

1405

the poultry industry. Now, he was not questioned as to that comparison on his direct examination. Counsel apparently does not wish to show at this point that the particular practices existing in other industries had an effect upon the economic conditions in the live poultry industry. He is merely seeking to argue with the witness as to the comparison between the ecor r ic emergency and generally thro out the country, and that in the live poultry industry, and if he does examine him on that topic, I submit he should make the witness his own.

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The Court: No, I think he is trying to test the witness' knowledge.

Mr. Rice: Very well.

The Court: I will let him do it. What he is trying to show is whether the witness took into consideration all the elements.

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Q. Do you know what month and in what year conditions improved in the poultry business and in all other industries after March of 1933? A. I wouldn't be able to answer that directly without going into the information that I keep. I do not try to keep all those things in mind, I mean in general.

Q. Do you know when it dropped after March, 1933? A. I would not know the specific month.

Q. Do you know whether it dropped during the last month over the month previous? A. The very last month?

Q. Correct.

The Court: You are asking about poultry now.

1408 Mr. Heller: Poultry and other industries.

A. Very recently the price in poultry has dropped.

Q. Do you know the conditions of other food commodities as they existed from the year 1929 till this present time? A. I do not keep it in my mind; I can find it very quickly.

Q. You haven't examined the statistics just before you came to testify, did you? A. Not all
1409 those general statistics.

Q. You have not examined the statistics of wholesale prices beginning in the year 1929 to 1934 in food products, have you? A. Not personally, recently.

Q. And you have not examined the statistics pertaining to retail food prices, their cost, from 1929 until the present time, have you? A. I have not examined those personally.

Q. Have you examined the index numbers for fats and oils from the year 1929 to the present time? A. No.

1410 Q. Have you examined factory employment statistics from the year 1926 to the present time? A. I have at different intervals.

Q. And do you know what the condition of that was in the year 1926? A. Factory employment, it wasn't as bad as it was in 1932, or 1933.

Q. Was it as bad as the year 1929? A. Offhand, I would say that 1929 was a very good year.

Q. 1929, that was the time the banks closed, is that correct? A. The banks closed in 1929?

Q. Yes; did they? A. I thought the banks closed in March of 1933.

1411

Q. That is correct. Now, in 1929, what were the conditions generally? A. They were very good.

Q. Now, what do you mean by "very good"? Is that the highest point? A. General business was supposedly good, in all these industries that you are talking about here——

Q. They prospered? A. It was good; we had prosperity.

Q. And when did it start to go down? A. Started to go down in October and November.

1412

Q. Isn't it a fact that the highest point of the industries I have mentioned was in the year 1928? A. That I wouldn't know without looking at the statistics.

Q. Isn't it a fact that it commenced to go down and it went down year by year from that period of time? A. Since 1929?

Q. Since 1928. A. It may be true in some industries, not in all of them.

Q. And the same thing happened with reference to food industries in general, isn't that correct? A. I would say in general.

1413

Q. Do I understand you to say that there is no code in the City of Philadelphia, the City of Chicago, and the City of Boston? A. Not as yet.

Q. Not as yet? A. That is right.

Q. Do I understand you to say these trade practices exist in those cities? A. I didn't say that.

Q. Do they exist in those cities? A. Some, but not all of them.

Q. Have you made a study of conditions as they exist in those cities? A. We are making studies.

1414 Q. Have you made them until this time? A. I am making some of them personally, and some of them I have my employees make.

Q. And no code provisions were made until the year 1934, during the month of April, although these conditions existed for all these years, is that correct? A. There never had been any way of making it before.

Q. This was the first opportunity? A. This was the first opportunity.

1415 Q. And by its own limitation it expires next year, isn't that correct? A. Unless amended by Congress.

Q. In other words, these regulations are only for one year, is that correct? A. Not for one year; the act is in effect for two years all told.

Q. But this code was enacted this year, 1934, April 23rd, is that correct? A. That is right.

Q. And that expires next year? A. In June.

Q. Do you hope to remedy the entire condition by the code being in existence for one year?

1416 The Court: Does it make any difference what he hopes?

Mr. Heller: All right.

The Court: We won't capitalize hope.

Mr. Heller: All right.

Q. Now, it is a true statement that there is no code anywhere in existence at present except——

Mr. Rice: I object to that; that is the third time he has been asked about that.

The Court: I thought he told you that.

Mr. Heller: There is no other code; all right.

Q. Is it possible to grade chickens at the source of shipment? A. It depends upon the particular source of that shipment.

Q. If the diseased chickens were condemned at the source of shipment, would any come into the City of New York? A. Only what might develop any sickness in between.

Q. Outside of that nothing would come in, is that correct? A. Oh, I would say that.

Q. And there are no code provisions pertaining to the source of shipment, are there, as to inspection, as to grading, are there? A. Not code provisions; there are some State laws. 1418

Q. But I mean Federal Code provisions. A. No.

Q. Now, you say you have examined certain conditions as they existed in the markets in the City and State of New York during the course of the last two years; is that correct? A. That is right.

Q. Wholesale markets? A. Wholesale and retail.

Q. About how many days would you spend at a particular slaughter house, and how many slaughter houses would you visit during your stay in New York City? A. I would not spend only a short time at each place, getting a broad picture of it. 1419

Q. Just exactly what were you looking for and what did you find? A. Looking for the methods that they used in the handling of poultry.

Q. And you found one method in one slaughter house to be practically the same as in another? A. Not always.

Q. What was the difference? A. I found slaughter houses that were doing a better job of handling their product than another, more sanitary.

1420 Q. We are talking about slaughter houses now, are we? A. Yes.

Q. What else did you find? A. I found some of those places were very careful in the handling of their birds, and other places that were not.

Q. What else? A. I found in some places that they were sorting their poultry in such a way that people were able to buy it to better advantage than others.

Q. Did you look for anything else? A. Well,
1421 I looked to see the general methods that they used in their business.

Q. What is there to selling poultry, please? A. What is there to selling poultry?

Q. Yes, in a slaughter house. Describe to the jury what is done in a slaughter house. A. Slaughter houses get their poultry from the market man, bring it into their place of business, pile it up in coops, probably along the side of the wall, in some instances out from the side of the wall, and people come in various days at various times—some days they open up earlier than other
1422 days—they come in, look at the poultry, tell the slaughter house man how much they want, start to bargain with him in order to get their poultry. In some instances that isn't necessary, some instances they may call the slaughter house, depending upon the particular type of slaughter house. The birds are then killed according to the custom, Jewish custom, thrown into a barrel, put into bags, boxes, and then taken to the place of business of the retailer or chicken store.

Q. In other words, we have approximately five operations that a slaughter house man has to go through, the purchase of the poultry—— A. That is right.

1423

Q. (Continuing.) —stacking them in their place, selling them to the customer, slaughtering them and getting their money, is that correct? A. In general that is.

Q. That is uniform of all slaughter houses, is it not? Wholesale slaughter houses? A. Not of every one exactly like that, because you have one or two slaughter houses that get their poultry in directly to their place of business.

Q. But the operation, when it is there—— A. Oh, yes.

1424

Q. (Continuing.) —it is about the same. That is what you found in your studies, did you not? A. Generally, as far as the technique is concerned, about the same.

Q. And in your opinion this method of doing business is not exactly proper, and for that purpose you have made recommendations to the Code Authority, is that it, for these additional regulatory provisions? A. I have not made any recommendations to the Code Authority.

Q. Well, someone else did, is that correct? A. I don't know what you are talking about.

1425

Q. There is nothing peculiar about this business, is there? A. I would say there are a lot of peculiar things.

Q. About the sale of the poultry in the place of business? A. A lot of things that are done differently than they are in other cities.

Q. We are talking about the City of New York, because this is the only place that has a code; that is correct, isn't it? A. You asked me if there is anything peculiar about the business.

Q. In New York City, when the poultry gets there. A. I said I think that it is peculiar be-

cause it is different than it is in most other places.

Q. But that is the uniform method of doing the business in the City of New York, isn't it? A. As far as killing, and so forth, is concerned.

Q. Nothing peculiar about it as far as the City of New York is concerned, as far as the merchants are concerned, is there? A. I don't suppose in their minds.

Q. And you do not have to be really an expert, trained in colleges, in order to conduct this 1427 kind of little business? A. I wouldn't say that one did.

Q. Isn't it a fact that these slaughter house men purchase their chickens in coops at the railroad terminals or the various markets; isn't that correct? A. That all was brought out. That is true.

Q. I want to bring it out from you. They come to the market, don't they, and buy certain coops of chickens, isn't that correct? A. Either in this city or other places.

Q. We limit ourselves now to the various mar- 1428 kets in the City of New York. When they buy their poultry there, it is inspected poultry, is it not, at the market, West Washington Market, for instance? A. Yes, if it is bought——.

Q. All train loads that come in are inspected first, is that correct? A. That is right.

Q. And then these wholesale market people, such as the defendants, buy their coops of chickens, is that correct? A. No, not entirely, because they don't all buy there.

Q. Some that do buy there, what they buy are chickens crated in coops, is that correct? A. Yes, buying at the central market.

1429

Q. Yes, after they were inspected. A. That is right.

Q. They load them on their trucks, is that correct? A. That is right.

Q. And bring them into their places of business, is that correct? A. Yes.

Q. And it is from that point on that they are prohibited from having straight killing; is that correct? Am I right? A. Straight killing refers to killing that is in the slaughter house.

1430

Q. Exactly. Now, after they get delivery of the poultry in coops,—they buy whole crates, is that correct? A. Half or whole crates.

Q. But they don't select them down there, they don't grade them down there, do they, at the West Washington Market, for instance? A. Oh, many of them look the poultry over very carefully to see that the general run of it looks good. They do a certain amount of grading, yes.

Q. In other words, if they find a cull, they throw it out? A. Many of them do.

Q. And the rest they take, is that correct? A. They do, if they accept the purchase, surely.

1431

Q. They cannot say to the commission merchant, "I want a coop of chickens with average weight of six pounds," can they? A. They can say that, yes.

Q. Can they get it? A. They could if they would all live up to this thing and do it.

Q. Is there anything in the Code which provides that they can buy or cannot buy selected chickens at the West Washington Market, that you know of?

Mr. Rice: I object, if your Honor please. I have no objection to the complete discussion of this, but it seems to me that we are

1432 wasting time in fruitless arguments upon the meaning of the code provision. That is a question of interpretation.

The Court: If there is anything in it, he may ask it.

Mr. Rice: Very well.

The Court: Is there anything to it at all?

Mr. Rice: I do not think there is any question about the interpretation of the Code's provision.

1433 The Court: Is there any question at all that they cannot select the individual chicken, but must take the coop or half coop? Is there any question?

Mr. Rice: There is no question but that the Code simply prohibits any practice other than straight killing.

The Court: That is, they must buy the coop or half coop, they cannot select the individual chickens out of the coop or half coop?

1434 Mr. Rice: Yes. And that is transactions between market men and the retailers.

Mr. Heller: In other words, the transaction that counsel speaks of is when the poultry has already reached the place of business, such as the defendants, correct? Am I right, Mr. Rice.

Mr. Rice: I will read the exact Code provision, Section 14 of Article 7 of the Code, "Straight Killing." It is provided that the following practice is prohibited, "The use, in the wholesale slaughtering of poultry, of any method of slaughtering other than 'straight killing' or killing on

1435

the basis of official grade. Purchasers may, however, make selection of a half coop, coop, or coops, but shall not have the right to make any selection of particular birds."

Now, that says the use in the wholesale slaughtering of poultry, which means the transactions between wholesale slaughter house operators and the retail dealers, butchers, that purchase from them. In connection with that we should read the definition contained in the code of straight killing.

1436

Section 15 of Article 2 of the Code "The term 'straight killing' means the practice of requiring persons purchasing poultry for resale," that means retailers or butchers, purchasing for retail to the consumer —"to accept the run of any half coop, coop or coops as purchased by any slaughter house operators except for culls," and then culls as defined as "poultry unfit for human consumption."

1437

Q. So that if one goes to the West Washington Market, they would get their coops of chickens as is, except they would throw out the diseased chickens or culls? A. Unless they insisted that it be graded the way they wanted it.

Q. I suppose that if they insisted that they be graded the commission merchant would have to dispose of the poultry which was not graded, that which was left over after the grading took place and take a losing price or a less price than the graded poultry? A. What would happen in that case is the slaughter house man insisted on having the kind of poultry that they

1438 wanted, we would develop a program of grades, where the grades would be reflected back to the man in the country and he would buy accordingly and ship the kind of stuff in here that was demanded.

Q. All right, a dealer comes to the market,—he goes right there this morning—he needs three coops of chickens, and he selects the grades of chickens. He takes the cream of them, the very best, and he leaves the rest there. Now what
1439 happens to the others, today—this Friday—would they have to be sold for less or more? A. They would be sold at whatever price that man could get for them.

Q. It would be less than those that were graded or better quality? A. Unless some other individual was in a place where he felt he could still sell at a good price.

Q. That is a possibility? A. A slight possibility.

Q. So that the commission merchant is more apt and can control the purchase of chickens as
1440 is, is that correct? A. I don't know what you mean by that question.

Q. Will the commission merchant permit the grading or does he permit grading and has he permitted grading for the last three months? A. I imagine if anybody would want grading and insist on it sufficiently they would get it.

Q. That is to your own knowledge? A. That is if they asked for it enough they would get it.

Q. Don't imagine anything, please. Have you any personal knowledge that such a condition existed for the past three months or past year—the grading of poultry by the West Washington Market? A. No, I haven't.

Q. Did you listen in to the witness yesterday, the commission merchant from the Bronx? A. Most of the time.

Q. Did you hear him say that the only thing that takes place is that the inspection is a little more rigid but the wholesale slaughter house man must take his coop as is? A. I don't recall him saying that.

Q. If he said it that would be a fact, wouldn't it? A. I presume he knows what he is talking about.

1442

Q. Now if Rogers Peet were selling a suit of clothes for $60 and John Wanamaker was selling a suit for $17, would that tend to increase the sale of poorly-made clothes or would it throw John Wanamaker out of business? A. I don't know anything about the suit business.

Q. In other words your economic conclusion as an expert is that a man selling chickens at a cheaper price would tend to bring in unfit chickens or diseased chickens, that is based on what? A. The fact that it actually happens when they do those things.

1443

Q. Didn't you say this morning that you had no statistics to show just how many diseased chickens, if any, are actually consumed? A. I have never made a study of the consumer to that extent.

Q. Yet you draw a line between the sale of a suit of clothes and a sale of a chicken? A. From an economic standpoint, because a suit of clothes is not a perishable product and a live chicken is.

Q. In what way would that affect the thing? A. Well, a man can hold a suit of clothes for a long time, but not a chicken.

1444 Q. Have you ever heard of a seasonable product, such as a summer suit or a fall suit or a winter suit? A. Yes, but a summer suit you can hold for three or four months, you do not have to sell it within a day or two.

Q. Three or four months. A. I imagine you could.

Q. In other words, a man desiring a summer suit would buy it in the middle of August? A. Quite frequently I have bought a summer suit in the month of August.

1445 Q. Because it is cheaper? A. Not necessarily.

Q. Because it is dearer——

The Court: Aren't we getting wide afield. Chickens do not carry any labels on them.

Q. Have you any statistics as to what percentage of all poultry consumed in the United States, New York consumes? A. You asked me that once before, I haven't them here.

Q. As to live chickens? A. I haven't them

1446 with me, but I can get it for you.

Mr. Heller: That is all.

Redirect examination by Mr. Rice:

Q. Mr. Termohlen, just one question; as an economist you of course are familiar with the fact that there has been a national economic emergency in this country? A. Yes.

Q. And you are generally familiar with the fact that this national economic emergency in all commodities has been produced partially as the result of unfair methods of competition? A. Yes.

Q. And that there are unfair methods of competition for the poultry industry which may differ slightly from unfair methods of competition in other industries? A. Yes. 1447

Q. Each industry may have unfair methods of competition that may have brought about or accentuated the economic emergency, is that right? A. That is true.

Mr. Rice: That is all.

Recross examination by Mr. Heller: 1448

Q. What are the unfair methods of competition in the clothing industry? A. I cannot tell you, but I could find out quickly by looking at their Code.

Q. What are the unfair methods of competition in the shoe industry? A. I say again that I cannot tell you, but I could find out by examining their Code.

Q. Can you tell us the unfair methods of competition in any other industries than the poultry industry? A. Some general ones.

Q. That is the extent of your knowledge? A. 1449
I know that unfair methods exist in practically all businesses.

Q. You are guessing? A. I am not guessing. They must have or we would not have some 600 Codes at Washington.

Q. You don't know what they are? A. I cannot tell you each specific one for each industry, no.

Q. Well, isn't it a fact that some Codes are enacted for the purpose of freezing out the small fellow? A. Just the opposite.

1450 Q. Are you sure about that? A. Very specifically, there is a mandate that there can be no creation of monopolies.

Q. Have you read the Darrow report? A. That is one man's opinion.

Q. Wasn't he delegated to do that and report to the President? A. I do not know that I should agree with him in his report.

Q. But he did make such a report, didn't he? A. A report was made.

1451 Q. And that was his conclusion, wasn't it? A. Not agreed to by everybody.

Q. But that was his conclusion, wasn't it?

Mr. Rice: I object, your Honor, I object to the conclusion of this man, it is purely argumentative anyhow.

The Court: He has already said that.

Q. Don't you know that price-fixing has been found to be unworkable? A. There is no price-fixing in any of the Codes that I have anything to do with.

1452 Q. Don't you know that that is the policy of your administration now? A. What is it?

The Court: I do not think that has anything to do with this, there is no price-fixing in this case.

Redirect examination by Mr. Rice:

Q. There is no price-fixing in the live poultry Code, is there? A. I have watched it with a great deal of care to see that there should not be.

Mr. Rice: That is all.

(Witness excused.)

LEROY PETERSON, called as a witness on behalf of the Government, having been duly sworn, testified as follows:

Direct examination by Mr. Rice:

Q. Mr. Peterson, what is your occupation? A. I am the Code Supervisor for the Live Poultry Code in New York City.

Q. How long have you been Code Supervisor? A. Since April 23, 1934.

Q. What did you do prior to that time? A. I 1454
was an economist with the Consumers' Council of the Agricultural Adjustment Administration, in Washington.

Q. What were your functions as an economist of the Consumers' Council's office? A. To analyze requests for Codes, sit on the hearings of codes for the protection of the producers and consumers.

Q. What was the function of the Consumers' Council's office of the Agricultural Adjustment Administration? A. To represent the consumers of products, and to see that the consumer is 1455
properly protected.

Mr. Heller: I do not think we ought to go into that, that does not pertain to this industry.

The Court: He is trying to qualify him.

Mr. Heller: As what?

The Court: I do not know, but he is asking him in general what his occupation has been, what his duties were.

Q. Will you describe a little more fully what your particular functions were as economist in

1456 the Consumers' Council's office? A. Myself, along with other economists, were assigned to various codes which came before the Agricultural Adjustment Administration. Our duties were to make an analysis of the requests for these codes by industries, become acquainted with the members of the industry to find out what they were attempting to obtain through these codes, and attend the hearings, the formal hearings, and the informal hearings after the formal hearings,
1457 assist in the preparation of a code, and our particular function was to see that the consumer of whatever product was sold by that industry was adequately protected.

Q. When an industry such as the live poultry industry proposed to the Agricultural Adjustment Administration that there be a price-fixing provision in a proposed code what was your function in connection with that?

Mr. Heller: That is objected to.

The Court: We have no price-fixing here, why bother with that?

1458 Mr. Rice: Very well.

The Court: It would only confuse the jury, we are not dealing with that here.

Q. What codes did you deal with as an economist of the Consumers' Counsel's office?

Mr. Heller: I do not think that is any part of the qualifications of anyone.

The Court: What?

Mr. Heller: What codes he dealt with.

The Court: Oh yes, he is trying to show as an economist what he was doing, he may do that.

1459

Mr. Heller: All right.

The Court: We are not going into each Code.

A. Quite a wide variety of Codes. The Baby Chick Code formerly mentioned, the Naval Stores Marketing Agreement, that is turpentine and rosin; the Manufacture of Hog Cholera Serum; the Packers' Commission Men's Code; this present Live Poultry Code in New York, and many informal conferences on codes that were never passed, poultry codes for practically 1460
the entire United States were proposed and we had informal hearings on them, but for one reason or another those codes were never passed and approved by the President. I went to San Francisco, Jacksonville and Chicago to attend these hearings, and also a great many hearings in the City of Washington.

Q. Do you know under what circumstances the Live Poultry Code was adopted? A. I do.

Q. The Live Poultry Code for metropolitan New York? A. Yes.

Q. What were those circumstances, just briefly? 1461
A. The Code was proposed by the industry——

Mr. Heller: Now, if it please your Honor, we have conceded that a Code has been adopted, and I think that ends it.

The Court: I know, but I will let him testify.

Mr. Heller: Exception.

A. The Code was proposed by a number of associations of the live poultry industry here in the metropolitan area. They requested a Code, and a formal hearing was called. Due notice of

1462 that hearing was given to the various units of the Agricultural Adjustment Administration——

The Court: We have got all that, that is all in evidence.

The Witness: I meant notice to us as the Consumers' Council.

Q. Yes. A. We attended a formal hearing and a number of informal hearings following the formal hearing, and a Code was finally presented
1463 and signed by the President.

Q. Just what duties did you have in connection with the consideration of the proposed Live Poultry Code for New York? A. A very careful analysis of trade practices that would be finally adopted in this Code, particularly having to do with matters that would affect the consumer, that is the desirability as to standards and grades, complete elimination from the Code of any price-fixing arrangements, seeing that the consumer would get a good quality of poultry at a reasonable price.

1464 Q. Did you attend the hearing on the Live Poultry Code? A. I did.

Q. You sat at the chairman's table? A. I did.

Q. You questioned members of the industry in regard to their proposals? A. I certainly——

Q. For code provisions? A. Yes.

Q. Approximately how many members of the industry were represented, I mean how many were actually present?

Mr. Heller: That is objected to as not binding on us.

The Court: I will allow it.

Mr. Heller: Exception.

1465

A: From 80 to 125. The hearing went on for two days, and at various sessions of the hearing there were different numbers of people there.

Q. Now, after the Code was adopted on April 13, 1934, you became the Code Supervisor, did you not? A. I did.

Q. Will you describe briefly the circumstances under which you became Code Supervisor?

Mr. Heller: I do not think that is pertinent to the issues here, how he became Code Supervisor.

1466

The Court: I do not know, if he was elected by the industry or anything of that sort——

Mr. Heller: The indictment sets out how he became Code Supervisor.

The Court: I will let him answer.

Mr. Heller: Exception.

A. The Code Supervisor, although working for the industry, is in this particular Code responsible only to Secretary Wallace——

Mr. Heller: I object; that isn't the answer.

1467

The Court: That isn't the answer. Let us get down to the case.

Q. Who were you appointed by? A. Secretary Wallace and Hugh Johnson.

Q. When were you appointed? A. April 23, 1934.

Q. When did you take office? A. The same day.

Q. What did you do after your appointment on April 23, 1934? A. I accumulated a staff, got a place for an office, bought the necessary equip-

1468 ment, and got ready to get the Code into operation.

Q. Approximately how long did it take you to organize your staff and prepare for enforcement of the Code? A. A little less than a month.

Q. What steps did you take? A. I obtained offices in the Federal Building at 641 Washington Street.

Q. Is that near the West Washington Market? A. About five blocks from West Washington Market.

1469 Q. And West Washington Market is the place where a great number of people in the live poultry trade congregate? A. Yes. We wanted to be in close proximity to the market so we could have constant access to the members of the industry, and still not be in the market. We obtained an office, as I said, in the Federal Building, being a semi-federal agency. We accumulated a staff of lawyers, office help, investigators, stenographers, and so on.

Q. How large is your staff today? A. Either sixteen or seventeen people.

1470 Q. Approximately what is the annual budget?

The Court: What has that to do with this case?

Mr. Rice: If your Honor please, I wish to show the extent of the enforcement and compliance program.

Mr. Heller: I have no objection; he can ask that. I will consent to it.

A. Our present budget is approximately fifty thousand dollars—our present expenditure on an annual basis is about fifty thousand dollars, although we have an approved budget of eighty-eight thousand dollars.

1471

Q. Per year? A. Per year.

The Court: We had better stop now because it is one o'clock.

Mr. Rice: Thank you.

The Court (addressing the jury): Gentlemen, do not allow anyone to talk to you about the case, do not discuss it among yourselves, do not form any opinion until it is finally submitted to you. Come back at two o'clock.

(Recess until 2 P. M.)

1472

(Met pursuant to adjournment at 2:00 P. M.; present as before.)

LEROY PETERSON resumes the stand:

Direct examination (continued) by Mr. Rice:

Q. Mr. Peterson, you testified this morning that you had been appointed Code Supervisor by General Hugh Johnson of the National Industrial Recovery Act and by Secretary Wallace of the Department of Agriculture, is that right? A. That's right.

1473

Q. And had you been recommended by the live poultry industry prior to that appointment? A. Yes.

Q. Under what circumstances? A. Well, the same group of the industry that proposed the Code, immediately on the expiration of the hearing, first approached me after the hearing and asked if I would be interested in becoming Code Supervisor in the industry.

1474 Mr. Heller: I do not think that is relevant, your Honor, he is the Code Administrator, and that settles it.

Q. What was the effective date of that Code? A. The Code became effective April 23, 1934.

Q. Ten days after it was approved by Franklin D. Roosevelt? A. Yes, sir.

Q. And you were appointed on April 23rd? A. Yes, sir. I was appointed——

Q. Never mind specifically when your two ap-
1475 pointments came through; when was your ultimate appointment? A. April 23rd.

Q. Then you stated that you spent the next two or three weeks getting your staff together? A. Yes.

Q. What did you do after that? A. We called a general meeting of the entire industry for May 15th.

Q. 1934? A. 1934. We were ready then to put the Code into effect on May 16th and we called a meeting of the entire industry in the Federal Building at No. 641 Washington Street
1476 on the afternoon of May 15th. About 800 people of the industry attended that meeting.

Q. 800? A. Everybody that had even the remotest affiliation with the industry attended that meeting.

Q. What happened at that meeting? A. At that meeting——

Mr. Heller: Just a minute, your Honor, I object to it as not binding upon us.

The Court: I don't know what they are trying to show.

Mr. Rice: I will withdraw the question.

Q. Were the Code provisions discussed at this meeting of 800 people of the industry? A. They were.

Q. And what particular provisions were discussed?

Mr. Heller: I object to that.

The Court: How does that bind these people at all, Mr. Rice?

Mr. Rice: We will show that these people were among the 800 present.

The Court: Well, show that first and 1478
then you can go ahead.

Q. Do you know whether the Schechter Brothers were represented at that meeting?

Mr. Heller: I object to the form of the question. Let him state who was there.

Q. You stated that there were 800 people there. A. Yes.

The Court: Were any of these defendants there?

The Witness: Personally I don't know 1479
whether they were or not.

Q. Have you been informed?

The Court: Oh, no.

Mr. Rice: If your Honor pleases, we will prove by another witness that the Schechter brothers were present at that meeting.

The Court: I understand, but you have not proved it and he objects. If it was some other thing I would take it subject to connection, but I am afraid you will

1480 have to prove that they were there before you can show what happened at that meeting.

Q. Mr. Peterson, when did the Live Poultry Code Authority commence active enforcement of the Code? A. May 16th, 1934.

Q. That is the day after the meeting of May 15? A. Yes.

Q. 1934? A. Yes.

Q. Was it announced at the meeting of May
1481 15, 1934, that enforcement of the Code would commence on the following day? A. Yes.

Mr. Heller: Objected to.

The Court: I do not see how you are going to bind these people by announcements in a meeting unless you show they were there.

Mr. Heller: I move to strike the statement out.

The Court: They can show what they did to enforce it.

1482 Q. What happened immediately after the meeting of May 15th, 1934?

Mr. Heller: Objected to, in the first place because it is too general. I do not know how that binds us, what he did or someone else did.

The Court: That question is too broad.

Q. What steps did you, as Code Supervisor, take toward enforcement of the provisions of the Live Poultry Code after the meeting of May 15th, 1934?

Mr. Heller: That is immaterial.

The Court: I will let him answer what he did. I do not know what they are getting at.

Mr. Heller: Exception.

The Court: You ought to get down to the case, because some of these things have no materiality at all so far as I can see. Go ahead. What steps did you take?

A. Our investigators, who we hired prior to May 16th, were assigned to various sections of 1484
the City, and their function was to go from slaughter house to slaughter house to see if the provisions of the Code were being lived up to. That was continued and is still in effect. These men would make reports. We hired two men from the industry, one from the slaughter house group and one from the commission house group. These men were able, through their contracts, to find out those persons who were living up to the Code and those who were not. For the first week after the Code was in effect we got almost 100 per cent. compliance with the Code. The pro- 1485
visions that were most effective, most important, were the provisions——

Mr. Heller: I object to this statement, your Honor.

The Court: Yes.

Mr. Heller: It certainly hasn't anything to do with us.

The Court: His opinion as to the importance of the provisions is of no moment.

Q. Do you know to what extent the live poultry trade of New York generally received notice to the effect that the Live Poultry Code was

1486 being enforced after May 15, 1934? A. I did not get your question. What methods by which they knew?

Q. No, to what extent did the Live Poultry industry receive notice? A. Well, a hundred——

Q. That the Code was being enforced after May 15, 1934. A. A hundred per cent. of the industry knew it was being enforced.

Q. How do you know that? A. Because our inspectors visited every slaughter house in the City and told them it was.

1487

Mr. Heller: I move to strike it out. It is purely hearsay.

The Court: Yes.

Q. Did you instruct your investigators to visit every slaughter house?

The Court: Strike it out as hearsay.

Mr. Rice: I beg your pardon?

The Court: I say, strike it out as hearsay. What we want to do is to get down to these defendants. I do not care whether

1488 everybody else knew it or did not know it, and it was the law that they must find out. Go ahead.

Q. On June 1, 1934, did you have a telephone conversation with the defendant Aaron Schechter? A. I did.

Mr. Heller: Objected to because there has been no foundation laid for that.

The Court: Of course, he will have to say that he knew the person; knew the voice and so forth.

Mr. Rice: This will be definitely connected up by a party who was on the other side of the telephone wire.

The Court: All right.

Mr. Heller: At this time I object to it.

The Court: You had better show how he knows it. Then we will get the other part of it.

Q. Did you have a telephone conversation with a person purporting to be Aaron Schechter on June 1, 1934? A. Yes. 1490

Q. Under what circumstances did you have that telephone conversation? A. As part of the enforcement of our Code, we sent auditors and accountants to the various slaughter houses. A few days before June 1 we sent accountants and auditors to the Schechter slaughter house.

Q. For what purpose? A. To examine their books to see to what extent they were violating the Code.

Mr. Heller: Now, may it please your Honor, I move to strike that statement out. It is wholly prejudicial to the defendants. 1491

The Court: Yes.

Mr. Heller: And I ask that the witness be instructed not to repeat it.

The Court: Yes. I do not see how you can say they were violating the Code.

Mr. Rice: We, of course, do not rely on any such statement as that as affirmative proof.

The Court: I know, and the jury should not hear any such statement as that either. The jury will disregard it.

1492 Q. You had a telephone conversation after you had sent accountants to examine the books of Schechter Brothers at 858 East 52nd Street, Brooklyn, is that right? A. That is right.

Q. What was that telephone conversation?

Mr. Heller: I object. He has not identified the defendant that he spoke to as yet.

The Court: That is technically correct.

Mr. Rice: I beg your pardon?

1493 The Court: That is technically correct. If he insists on the objection, that the man be definitely identified before the jury hears the conversation, he is right.

Mr. Rice: Do you want to reverse the order of our witnesses, putting on the——

The Court: No, you must not, in a criminal case, and you haven't the right to, ask him before the jury whether he will concede or not. That is all right in a civil case, but not in a criminal case. It has been so held in this Circuit. If you want

1494 to withdraw this witness to bring somebody here to identify him and then go on, that is another way.

Mr. Rice: I should like the privilege of withdrawing Mr. Peterson.

The Court: Yes, and let somebody identify the man who was speaking over the phone and then you may go right along.

Mr. Rice: Very well. I have sent for him, your Honor.

The Court: That is all right, surely.

(Witness temporarily excused.)